

***United States Court of Appeals  
for the Second Circuit***



**APPELLANT'S  
APPENDIX**





# 74-2055

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**United States Court of Appeals  
FOR THE SECOND CIRCUIT**

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DOCKET No. 74-2055

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UNITED STATES OF AMERICA,

*Appellee,*

*against*

CARLOS MARTINEZ,

*Appellant.*

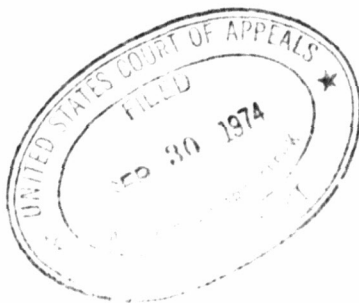
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ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK.

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**APPENDIX FOR THE APPELLANT,  
CARLOS MARTINEZ**

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PAUL E. WARBURGH, JR.  
*Attorney for Appellant*  
122 E. 42nd St.  
New York, New York 10017

**PAGINATION AS IN ORIGINAL COPY**

F# 741033 ATTORNEYS

*For U. S.:* **Clayman**

for deft. TORRE:

Robert Salzman

500 W. 161St. NYC.

~~ME 5-1434~~

for debt M. TORRE.

Robert Saltzman, 500, E. 141  
Bronx, NY. 655-1404

For Defendant: FONTANEZ-Nar-

Perlmutter-258 B'way off

MARTINEZ-Paul Warburton- 10

E. 42 St., N.Y. 661-2190

### ABSTRACT OF COSTS

**AMOUNT****CASH RECEIVED AND DISBURSED****DATE**

NAME \_\_\_\_\_

RECEIVED

DISBURSED

2/2/74

History of April (iv. Sec)  
(MARTINEZ)

85,000.00

\$5,000	00
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**Attorney.**

*Commissioner's Court.*

**Witnesses,**

DATE \_\_\_\_\_

## PROCEEDINGS

15-74	Before JUDD, J. - Indictment filed and ordered sealed by the Court.
-	Bench warrants ordered and issued as to all defts.

24-74	Before MISHLER, CH.J.-Case called- Defts Algarin, Rodas, Maldonado present without counsel- Indictment unsealed by the Court- Court to appoint counsel for defts- Deftsarraigned and the Court enters a plea of not guilty on behalf of the defts ALGARIN, RODAS AND MALDONADO. Defts O.R.
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25-74	Before MISHLER, CH.J.- Case called- Defts Evaristo Quinones and Elba Quinones present without counsel- Defts arraigned and the Court enters a plea of not guilty on behalf of each deft- Defts O.R.- Court to appoint counsel for defts Evaristo Quinones and Elba Quinones
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8-74	Petition for Writ of Habeas Corpus Ad Prosequendum filed (Martinez)
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8-74	By MISHLER, CH J - Writ Issued, ret. Jan. 30, 1974 (MARTINEZ)
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	PROCEEDINGS	CLERK'S FEES	
		PLAINTIFF	DEFENDANT
74	Before MISHLER, CH J - case called - deft REINER present without counsel - court to appoint counsel for the deft - deft arraigned and the court enters a plea of not guilty on behalf of the deft - DEFT bail set at \$10,000 P.R. Bond with cash deposit of \$1,000 or a \$10,000 surety company bond - Feb. 22, 1974 to set a date for trial as to all defts.		
74	Before MISHLER, CH.J.- Case called- Defts MARTINEZ AND FONTANEZ present with counsel- Interpreters present- Deft Martinez arraigned and enters a plea of not guilty- Bail set at \$100,000 Surety Co. Bond- Deft Fontanez arraigned and enters a plea of not guilty- Bail contd at \$100,000 Surety Bond Co. set in 73 CR 1012- Feb. 22, 1974 set for all motions		
74	Notice of appearance filed (FONTANEZ)		
74	By MISHLER, CH.J.- Order appointing counsel filed (MARTINEZ)		
4	Writ retd and filed- Executed (MARTINEZ)		
4	Notice of Appearance filed (TORRE)		
4	Before MISHLER, CH J - Case called - deft Torres & counsel Mr. Saltzman present - deft arraigned and enters a plea of not guilty - Bail in 73 CR-1012 as to deft MICHAEL TORRE is exonerated and bail is set at \$10,000 surety Co. Bond in this case.		
4	Govts Notice of Readiness for Trial filed		
4	Petition for Writ of Habeas Corpus Ad Prosequendum filed (MARTINEZ)		
74	By BARTELS J - Writ Issued, ret. Feb. 22, 1974 (MARTINEZ)		
74	Before BARTELS J - case called - Deft REINER & counsel Maris Bibelnicks present - defts motion for reduction of bail granted. Bail reduced to \$500 cash - to be posted on Feb. 18, 1974.		
4	By CATOGGIO, MAG.- Copy of Order for acceptance of cash bail filed (REINER)		
4	Notice of motion for severance, bill of particulars, inspection, etc.- ret. 2-22-74 (MARTINEZ)		
4	Memorandum of Law in support of motion for discovery and bill of particulars filed (CARLOS MARTINEZ)		
74	Before MISHLER, CH J - case called - Mar. 1, 1974 at 3:00 PM for pre trial - April 29, 1974 for trial.		
74	Notice of Appearance filed (TORRE)		
74	Notice of Motion filed, ret. March 15, 1974 (deft IRIS MALDONADO) for Bill of Particulars, Discovery & Inspection, etc.		
4	Before NEX MISHLER, CH J - case called - Bre Trial Conference held and concluded.		
4	Before MISHLER, CH J - case called - motion argued as to Bill of		

DATE	PROCEEDINGS
	Particulars is granted and denied as indicated on the record - Decision Reserved as to the statements (Carlos Martinez)
3-1-74	Writ ret'd and filed - Executed (CARLOS MARTINEZ)
<del>3-1-74</del>	<del>Writ ret'd and filed - Executed (CARLOS MARTINEZ)</del>
3-7-74	By MISHLER, CH. J. - Memorandum of decision and Order filed denying Martinez's motion for discovery
3/15/74	Before MISHLER, CH. J. - Case called - Motion adj'd to 4/5/74
4-5-74	Before MISHLER, CH. J. - Case called - On consent motion pursuant to R. 16 of the F.R.C.P., etc. is marked off (MARTINEZ)
4-15-74	Petition for Writ of Habeas Corpus Ad Prosequendum filed (MARTINEZ)
4-15-74	By MISHLER, CH. J. - Writ Issued, ret. 4-17-74 (MARTINEZ)
4-17-74	Magistrate's file 74 M 39 inserted into CR file.
4-24-74	Order to show cause why an order should not be made dismissing the indictment on the ground that the deft has been in jeopardy of the charges, etc. filed - ret. 4-26-74 at 2:00 P.M. (CARLOS MARTINEZ)
4-26-74	Before MISHLER, CH. J. - case called - defts TORRE, FAHERTY, EVARISTO & ELBA QUINONES & ELLEN REINER present with attys - defts arraigned and having been advised of their rights by the court and each on his own behalf withdraws pleas of not guilty and each deft enters a plea of guilty to count 1. Sentences adj'd without date - Bail conditions continued as to all defts. Motion argued for dismissal of the indictment ( Carlos Martinez ) Decision Reserved.
4-29-74	Before MISHLER, CH. J. - Case called - defts SAUL FONTANEZ, GLORIA RODAS, IRIS MALDONADO & GLORIA ALGARIN present with counsels - defts arraigned and after being advised of their rights by the court and each on his own behalf withdraws pleas of not guilty to count 1 and each deft enters a plea of guilty to count 1 - sentences adj'd without date - Bail conditions contd.
4-29-74	Before MISHLER, CH. J. - case called - trial ordered and begun as to deft MARTINEZ - Interpreter Maria Elena Cardenas present and sworn - deft waived trial by jury - waiver signed - trial contd to 4-30-74.
4-29-74	By Mishler, Ch J - Stipulation filed waiving trial by jury. (Carlos Martinez)
4-30-74	Before MISHLER, CH. J. - Case called - Deft MARTINEZ and counsel Paul Warburg present - Trial resumed (non-jury) - Interpreter Ms. Cardenas present - Trial contd to 5-1-74 at 10:00 A.M. (CARLOS MARTINEZ)



PROCEEDINGS

- 74 Before MISHLER, CH J - case called - deft Martinez & counsel Paul Warburg present - Interpreter Maria Elena Cardenas present - trial resumed (non-jury) Govt rests - motion by deft to dismiss counts 2, 4, 8, 10, 12, 14, 16 & 20 argued - Decision Reserved - Motion by deft to dismiss all other counts of the indictment argued - motion denied - deft rests - decision reserved on charges of the indictment - double jeopardy hearing to begin on May 2, 1974 at 10:00 am.
- 74 Before MISHLER, CH J - case called - deft Martinez & counsel Paul Warburg present - Interpreter Maria Elena Cardenas present - Double jeopardy hearing held - motion to dismiss by the deft counts 2, 4, 6, 8, 10, 12, 14, 16 & 20 is denied - trial and hearing concluded - Decision Reserved.
- 74 Voucher for compensation of counsel filed (Expert Services) (Carlos Martinez)
- 4 Stenographers Transcript dated 4-26-74 filed
- 74 Magistrate's files 74 M 35, 152, 155 and 156 inserted into CR file.
- 74 Notice of motion for a n order, for the return of money taken from deft FONTANEZ on 11-10-73 (ret. on day of sentence) (forwarded to Judge Mishler)
- 4 2 stenographers transcripts filed (pgs 1 to 492) forwarded to Ch. Judge Mishler. (dated April 30 and May 1, 1974 respectively) Martinez.
- Voucher for Expert Services filed (Martinez)
- 74 Voucher for Expert Services filed (Carlos Martinez)
- 74 Before MISHLER, CH J - case called - sentences as to deft Michael Torre adjd to July 17, 1974 at 9:30 am; sentence adjd to Aug. 9, 1974 on consent as to deft Ellen Reiner; sentences as to defts ALGARIN, MALDONADO & GLORIA RODAS adjd to July 26, 1974 at 2:00 PM on consent.
- Before MISHLER, CH J - case called - defts ELBA QUINONES, SAUL FONTANEZ, EVARISTO QUINONES, MARY FAHERTY present with counsels - Deft FAHERTY sentenced to imprisonment for one year and one day/and special parole term of 5 years. On motion of Asst US Atty Caden counts 18, 19 & 22 are dismissed. Motion for a stay is denied. Deft EVARISTO QUINONES sentenced to imprisonment for a year and 1 day on count 1 and special parole term of 5 years. On motion of AUSA Caden counts 8 & 9 are dismissed. Oral motion by the deft for a stay is denied. Deft SAUL FONTANEZ sentenced to imprisonment on count 1 for a period of 7 years and special parole term of 10 years and also a fine of \$5,000. Motion argued by the deft for the return of a sum of money. Motion denied.
- Interpreter Emil Rodriguez present. On motion of Asst US Atty caden counts 2 through 23 inclusive are dismissed. deft ELBA QUINONES -imposition

DATE	PROCEEDINGS
	of sentence is suspended and the deft is placed on probation for a period of 5 years. On motion of AUSA caden counts 8 & 9 are dismissed.
7-12-74	Judgment and Order of Probation filed - certified copies to Probation (ELBA QUINONES. )
7-12-74	Judgment & Commitment filed -certified copies to Marshal (MARY FAHERTY, EVARISTO QUINONES, SAUL FONTANEZ &
7-12-74	Voucher for Expert Services filed (Evidentiary hearing -deft Carlos Martinez)
7-16-74	Certified copies of Judgments & Commitments ret'd and filed (defts. FAHERTY, EVARISTO QUINONES & SAUL FONTANEZ delivered to Federal Detention Headquarters)
7-17-74	Before MISHLER, CH J - case called - sentence adj'd to Aug. 23, 1974 on consent (MICHAEL TORRE)
7-22-74	Petition for writ of habeas corpus ad prosequendum filed (MARTINEZ)
7-22-74	By MISHLER, CH.J.- Writ issued, ret. 7-24-74 (MARTINEZ)
7-26-74	Before MISHLER, CH J - Case called - deft: CARLOS MARTINEZ & counsel Paul Warburgh & interpreter Albert Boyne present - Court renders a verdict of guilty on counts 2 to 11 incl., 14, 15, 18, 19, 20, 21 & 22 and counts 1, 12, 13, 15 & 17 are dismissed. Sentence adj'd to Aug. 2, 1974 at 11:00 am.
7-26-74	By MISHLER, CH J - Memorandum of Decision and Order filed that the Court finds the deft guilty of counts 2 to 11 inclusive 14, 15 and 18 to 22 inclusive (deft CARLOS MARTINEZ)
7-26-74	Before MISHLER, CH J - case called - deft IRIS MALDONADO & counsel E.Goldhush present - Imposition of sentence is suspended on count 1 and the deft is placed on probation for 5 years. On motion of Asst. U.S. Atty. Caden counts 14 to 17 and 20 and 21 are dismissed. Deft ALGARIN & counsel Murray Diamond present. Deft sentenced to imprisonment for one year and one day plus special parole term of 5 years on count 1. On motion of AUSA Caden counts 10, 11, 18 & 19 are dismissed. Deft RODAS & counsel Norman Fraiden present. Imposition of sentence is suspended on count 1 and the deft is placed on probation for 5 years. On motion of AUSA Caden counts 14 to 17 incl. and 20 & 21 are dismissed.
7-26-74	Judgment and Commitment filed for deft ALGARIN. Certified copies to Marshal - Judgment and Order of Probation filed for defts. RODAS & MALDONADO. Certified copies to Probation.



PROCEEDINGS

- 0-74 Voucher for compensation of counsel filed (deft Quinones, -Trevor Neale)
- 74 Certified copy of Judgment & Commitment ret'd and filed - deft. Esq.) delivered to Rikers Island, NY.
- 74 Writ ret'd and filed - Executed (Carlos Martinez)
- 4 Before MISHLER, CH.J.- Case called- Deft CARLOS MARTINEZ and counsel. and Interpreter Albert Boyne present- Deft sentenced to imprisonment for a period of 12 years plus a special parole term of 10 years plus a fine of \$5,000.00 on each of counts 2,3,4,5,6,7,8,9,10,11,14,15,18,19,20,21, 22. Said prison term and special parole term to run concurrently and to be consecutive to sentence imposed by Judge Lasker in the S.D.N.Y. on 2-1-74. The fines to be cumulative in the amount of \$85,000.00. The prison term are imposed pursuant to T-18, U.S.C. Sec. 4208(a)(2)- In the event the deft is reported special conditions of parole term that the deft is not to re-enter the U.S. or its territories during the special parole term- Deft advised of his right to appeal and clerk is directed to file notice of appeal with-1
- 74 Judgment and Commitment filed- certified copies to Marshal (CARLOS MARTINEZ)
- 74 Notice of appeal filed (CARLOS MARTINEZ)
- 74 Docket entries and duplicate of notice of appeal mailed to court of appeals (CARLOS MARTINEZ)
- 4 Voucher for compensation of counsel filed (Algarin)
- 3 By MISHLER, CH.J.- Memorandum of Decision and Order filed denying deft MARY FAHERTY'S motion for a reduction of sentence (copy sent to deft as ordered)
- 74 Voucher for compensation of counsel filed (Maldonado) counsel E. Goldbush.
- 4 Certified copy of Judgment & Commitment ret'd and filed as to deft Carlos Martinez. Deft delivered to Federal Detention Headquarters.
- 4 Notice of Motion filed for reduction of sentence imposed (ret. 9-13-74) as to deft Raffaella Algarin.
- 74 Before MISHLER, CH.J.- Case called- Deft and counsel present- Deft ELLEN REINER sentenced to a term of imprisonment for a period of 1 year and 1 day on count 1 and a special parole term of 5 years- On motion of A.U.S.A. Caden counts 4,5,10 and 11 are dismissed
- 4 Judgment and Commitment filed- certified copies to Marshal (REINER)
- 74 Copy of Judgment & Commitment ret'd and filed - deft REINER delivered to Warden, Rikers Island, N.Y.
- 74 By MISHLER, CH-J - Order-releasing bail filed (ELLEN REINER)
- 74 Order received from court of appeals and filed- that record be docketed on or before 8-23-74 (CARLOS MARTINEZ)

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## CRIMINAL DOCKET

DATE	PROCEEDINGS
8-23-74	Before Mishler, Ch J - case called - deft Alvaro Hernandez present - court enters a plea of not guilty on his behalf. Case set down for 9-13-74 at 10:00 am to set a date for trial. Bail \$75,000 surety bond.
8-23-74	Before MISHLER, CH J - case called - deft Michael Torre & counsel Mr. Saltzman present. Deft is sentenced on count 1 to a term of imprisonment of 2 years plus special parole term of 10 years to begin at the end of such term of imprisonment. Deft is also fined \$5,000 - deft to surrender on 9-13-74 at 4:00 PM. On motion of AUSA Caden counts 2 through 23 are dismissed.
8-23-74	Judgment & Commitment filed - certified copies to Marshal (MICHAEL TORRE)
8-27-74	Copy of letter for Petition for Transcripts filed by Louis Carlos Martinez (forwarded to Chambers)
9-4-74	By MISHLER, CH.J.- Memorandum of decision and Order filed that petition of deft Luis Martinez for transcript of the trial is denied (copy sent deft as ordered)
9-5-74	Voucher for compensation of counsel filed (RODAS)
9-5-74	Deft's proposed findings of fact filed (MARTINEZ)
9-6-74	Stenographers Transcript dated 8-2-74 filed
9-6-74	Stenographers Transcript dated 5-2-74 filed
9-9-74	Record on Appeal certified and handed to Paul Warburgh, Jr. Esq. for delivery to the Court of Appeals. (Martinez)
9-12-74	Acknowledgment received from the court of appeals for receipt of record on appeal (CARLOS MARTINEZ)
9-13-74	Before MISHLER, CH.J.- Case called- Motion by deft MICHAEL TORRE for time of surrender argued- Stay extended to 9-20-74 by 4:00 P.M.- Motion adjd as to deft ALVARO HERNANDEZ to 9-27-74 to set trial date- Motion to reduce sentence as to RAFFAELA ALGARIN argued - decision reserved to submit medical reports
9-24-74	By MISHLER, CH J - Memorandum of Decision and Order filed denying motion of deft Evaristo Quinones for reduction of sentence imposed. Copy mailed to the deft as instructed.

X

UNITED STATES OF AMERICA

-against-

SUPERSEDING INDICTMENT

CARLOS MARTINEZ,  
SAUL FONTANEZ a/k/a  
"Guillermo Urribe-Gomez"  
JUAN GUILLERMO MESA,  
JANE DOE a/k/a "Miriam"  
MICHAEL TORRE,  
ELGA GOMEZ,  
ELLEN REINER,  
EVARISTO QUINONES,  
ELBA QUINONES,  
RAFFAELA ALGARIN,  
GLORIA RODAS,  
IRIS MALDONADO,  
JOHN DOE a/k/a "Mario",  
JAIME PALMA,  
MARY FAHERTY and  
ALVARO HERNANDEZ.

(T.21, USC §812, §841(a)(1),  
§841(b)(1)(A), §952(a),  
§960(a)(1) and §960(b)(1);  
and T.18, USC §2)

Defendants.

X

THE GRAND JURY CHARGES:

COUNT ONE

On or about and between the beginning of February 1972 and the 11th day of November 1973, both dates being approximate and inclusive, within the Eastern District of New York and elsewhere, the defendants CARLOS MARTINEZ, SAUL FONTANEZ a/k/a "Guillermo Urribe-Gomez," JUAN GUILLERMO MESA, JANE DOE a/k/a "Miriam", MICHAEL TORRE, ELGA GOMEZ, ELLEN REINER, EVARISTO QUINONES, ELBA QUINONES, RAFFAELA ALGARIN, GLORIDA RODAS, IRIS MALDONADO, JOHN DOE a/k/a "Mario," JAIME PALMA, MARY FAHERTY and ALVARO HERNANDEZ, and others known and unknown to the Grand Jury wilfully, knowingly and unlawfully did combine, conspire, confederate and agree together and with each other, to violate Sections 812, 841(a)(1), 841(b)(1)(A), 952(a), 960(a)(1) and 960(b)(1) of Title 21, United States Code

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1. It was part of the conspiracy that the defendants, knowingly, intentionally and unlawfully would import into the United States from Colombia, Venezuela and Canada large quantities of cocaine, a Schedule II narcotic drug controlled substance.

2. It was further part of the conspiracy that the defendants knowingly, intentionally and unlawfully would possess with intent to distribute large quantities of cocaine, a Schedule II narcotic drug controlled substance.

3. It was further part of the conspiracy that the defendants would conceal the existence of the conspiracy and would take steps designed to prevent the disclosure of their activities.

In furtherance of the conspiracy and to effect the objects thereof the following overt acts, among others, were committed within the Eastern District of New York and elsewhere: (Sections 846 and 963 of Title 21, United States Code)

O V E R T   A C T S

1. Sometime in early February 1972, within the Eastern District of New York, the defendants CARLOS MARTINEZ, MICHAEL TORRE and ALVARO HERNANDEZ met and conferred in a restaurant concerning the possession and distribution of narcotic drugs.

2. Sometime in September 1972, within the Eastern District of New York, the defendants CARLOS MARTINEZ and ELGA GOMEZ met and conferred concerning the importation of cocaine.

3. On or about April 14, 1973, within San Antone, Venezuela, the defendants MICHAEL TORRE and ELLEN REINER received from the defendants JUAN GUILLERMO MESA and JANE DOE a/k/a "Miriam" approximately Ten Pounds (10) of cocaine concealed in suitcases with false bottoms to be imported into the Eastern District of New York.

4. On or about May 13, 1973, within the Eastern District of New York, the defendants EVARISTO QUINONES and ELBA QUINONES arrived at LaGuardia Airport in possession of approximately Ten Pounds (10) of cocaine concealed in suitcases with false bottoms.

5. On or about June 24, 1973, within the Eastern District of New York, the defendants ELLEN REINER and RAFFAELA ALGARIN delivered to the defendants CARLOS MARTINEZ and SAUL FONTANEZ a/k/a "Guillermo Urribe-Gomez" cocaine contained in suitcases with false bottoms.

6. On or about August 7, 1973, within the Eastern District of New York, the defendants GLORIA RODAS and IRIS MALDONADO delivered to defendants CARLOS MARTINEZ and SAUL FONTANEZ a/k/a "Guillermo Urribe-Gomez" cocaine contained in suitcases with false bottoms.

7. On or about September 23, 1973, within the Eastern District of New York, the defendants RAFFAELA ALGARIN and MARY FAHERTY arrived at John F. Kennedy International Airport in possession of approximately Ten Pounds (10) of cocaine contained in suitcases with false bottoms.

COUNT TWO

Sometime in early April 1973, within the Eastern District of New York, the defendants CARLOS MARTINEZ, SAUL FONTANEZ a/k/a "Guillermo Urribegomez", JUAN GUILLERMO MESA, JANE DOE a/k/a "Miriam" and MICHAEL TORRE, did knowingly and intentionally import into the United States from Venezuela approximately Two Pounds (2) of cocaine hydrochloride, a Schedule II narcotic drug controlled substance. (Title 21, United States Code, Section 952(a); Section 960(a)(1) and Title 18, United States Code, Section 2)).



COUNT THREE

Sometime in early April 1973, within the Eastern District of New York, the defendants CARLOS MARTINEZ, SAUL FONTANEZ a/k/a "Guillermo Urribe-Gomez", JUAN GUILLERMO MESA, JANE DOE a/k/a "Miriam" and MICHAEL TORRE, did knowingly and intentionally possess with intent to distribute approximately Two Pounds (2) OF cocaine hydrochloride, a Schedule II narcotic drug controlled substance. (Title 21, United States Code, Section 841(a)(1) and Title 18, United States Code, Section 2).

COUNT FOUR

On or about the 21st day of April 1973, within the Eastern District of New York, the defendants CARLOS MARTINEZ, SAUL FONTANEZ a/k/a "Guillermo Urribe-Gomez", JUAN GUILLERMO MESA, JANE DOE a/k/a "Miriam", MICHAEL TORRE and ELLEN REINER did knowingly and intentionally import into the United States from Venezuela approximately Ten Pounds (10) of cocaine hydrochloride, a Schedule II narcotic drug controlled substance. (Title 21, United States Code, Section 952(a); Section 960(a)(1) and Title 18, United States Code, Section 2).



COUNT FIVE

On or about the 21st day of April 1973, within the Eastern District of New York, the defendants CARLOS MARTINEZ, SAUL FONTANEZ a/k/a "Guillermo Urribe- gomez", JUAN GUILLERMO MESA, JANE DOE a/k/a "Miriam", MICHAEL TORRE and ELLEN REINER, did knowingly and intentionally possess with intent to distribute approximately Ten Pounds (10) of cocaine hydrochloride, a Schedule II narcotic drug controlled substance. (Title 21, United States Code, Section 841(a)(1) and Title 18, United States Code, Section 2).

COUNT SIX

On or about the 5th day of May 1973, within the Eastern District of New York, the defendants, CARLOS MARTINEZ, SAUL FONTANEZ a/k/a "Guillermo Urribe-Gomez", JUAN GUILLERMO MESA, JANE DOE a/k/a "Miriam" and MICHAEL TORRE, did knowingly and intentionally import into the United States from Venezuela approximately Ten Pounds (10) of cocaine hydrochloride, a Schedule II narcotic drug controlled substance. (Title 21, United States Code, Section 952(a); Section 960(a)(1) and Title 18, United States Code, Section 2).

COUNT SEVEN

On or about the 5th day of May 1973, within the Eastern District of New York, the defendants CARLOS MARTINEZ, SAUL FONTANEZ a/k/a "Guillermo Urribe-Gomez", JUAN GUILLERMO MESA, JANE DOE a/k/a "Miriam" and MICHAEL TORRE, did knowingly and intentionally possess with intent to distribute approximately Ten Pounds (10) of cocaine hydrochloride, a Schedule II narcotic drug controlled substance. (Title 21, United States Code, Section 841(a)(1) and Title 18, United States Code, Section 2).

COUNT EIGHT

On or about the 13th day of May 1973, within the Eastern District of New York, the defendants CARLOS MARTINEZ, SAUL FONTANEZ a/k/a "Guillermo Urribe- Gomez", JUAN GUILLERMO MESA, JANE DOE a/k/a "Miriam", MICHAEL TORRE, EVARISTO QUINONES and ELBA QUINONES, did knowingly and intentionally import into the United States from Venezuela approximately Ten Pounds (10) of cocaine hydrochloride, A Schedule II narcotic drug controlled substance. (Title 21, United States Code, Section 952(a); Section 960(a)(1) and Title 18, United States Code, Section 2)).

COUNT NINE

On or about the 13th day of May 1973, within the Eastern District of New York, the defendants CARLOS MARTINEZ, SAUL FONTANEZ a/k/a "Guillermo Urribe- Gomez", JUAN GUILLERMO MESA, JANE DOE a/k/a "Miriam", MICHAEL TORRE, EVARISTO QUINONES and ELBA QUINONES, did knowingly and intentionally possess with intent to distribute approximately Ten Pounds (10) of cocaine hydrochloride, a Schedule II narcotic drug controlled substance. (Title 21, United States Code, Section 841 (a) (1) and Title 18, United States Code, Section 2)).

COUNT TEN

On or about the 23th day of June 1973, within the Eastern District of New York, the defendants CARLOS MARTINEZ, SAUL FONTANEZ a/k/a "Guillermo Urribe- Gomez", JUAN GUILLERMO MESA, JANE DOE a/k/a "Miriam", MICHAEL TORRE, ELLEN REINER and RAFFAELA ALCARIN, did knowingly and intentionally import into the United States from Venezuela approximately Ten Pounds (10) of cocaine hydrochloride, a Schedule II narcotic drug controlled substance. (Title 21, United States Code, Section 952(a); Section 960 (a) (1) and Title 18, United States Code, Section 2)).

COUNT ELEVEN

On or about the 23rd day of June 1973,  
within the Eastern District of New York, the defendants  
CARLOS MARTINEZ, SAUL FONTANEZ a/k/a "Guillermo Urribe-  
Gomez", JUAN GUILLERMO MESA, JANE DOE a/k/a "Miriam",  
MICHAEL TORRE, ELLEN REINER and RAFFAELA ALGARIN, did  
knowingly and intentionally possess with intent to distribute  
approximately Ten Pounds (10) of cocaine hydrochloride,  
a Schedule II narcotic drug controlled substance. (Title  
21, United States Code, Section 841(a)(1) and Title 18,  
United States Code, Section 2)).

COUNT TWELVE

On or about the 21st day of July 1973, within the Eastern District of New York, the defendants CARLOS MARTINEZ, SAUL FONTANEZ a/k/a "Guillermo Urribe- Gomez", JUAN GUILLERMO MESA, JANE DOE a/k/a "Miriam", and MICHAEL TORRE did knowingly and intentionally import into the United States from Venezuela approximately Two Pounds (2) of cocaine hydrochloride, a Schedule II narcotic drug controlled substance. (Title 21, United States Code, Section 952(a); Section 960(a)(1) and Title 18, United States Code, Section 2)).

COUNT THIRTEEN

On or about the 21st day of July 1973, within the Eastern District of New York, the defendants CARLOS MARTINEZ, SAUL FONTANEZ a/k/a "Guillermo Urribe-Gomez", JUAN GUILLERMO MESA, JANE DOE a/k/a "Miriam" and MICHAEL TORRE did knowingly and intentionally possess with intent to distribute approximately Two Pounds (2) of cocaine hydrochloride, a Schedule II narcotic drug controlled substance. (Title 21, United States Code, Section 841(a)(1) and Title 18, United States Code Section 2)).

COUNT FOURTEEN

On or about the 5th day of August 1973, within the Eastern District of New York, the defendants CARLOS MARTINEZ, SAUL FONTANEZ a/k/a "Guillermo Urribe- Gomez", JUAN GUILLERMO MESA, JANE DOE a/k/a "Miriam", MICHAEL TORRE, GLORIA RODAS and IRIS MALDONADO, did knowingly and intentionally import into the United States from Venezuela approximately Ten Pounds (10) of cocaine hydrochloride, a Schedule II narcotic drug controlled substance. (Title 21, United States Code, Section 952(a); Section 960(a)(1) and Title 18, United States Code, Section 2)).

COUNT FIFTEEN

On or about the 5th day of August 1973, within the Eastern District of New York, the defendants CARLOS MARTINEZ, SAUL FONTANEZ a/k/a "Guillermo Urribe- Gomez", JUAN GUILLERMO MESA, JANE DOE a/k/a "Miriam", MICHAEL TORRE, GLORIA RODAS and IRIS MALDONADO, did knowingly and intentionally possess with intent to distribute approximately Ten Pounds (10) of cocaine hydrochloride, a schedule II narcotic drug controlled substance. (Title 21, United States Code, Section 841(a)(1) and Title 18, United States Code, Section 2)).

COUNT SIXTEEN

On or about the 20th day of August 1973, within the Eastern District of New York, the defendants CARLOS MARTINEZ, SAUL FONTANEZ a/k/a "Guillermo Urribe-Gomez", JUAN GUILLERMO MESA, JANE DOE a/k/a "Miriam", MICHAEL TORRE, GLORIA RODAS and IRIS MALDONADO, did knowingly and intentionally import into the United States from Canada approximately Eight Pounds (8) of cocaine hydrochloride, a Schedule II narcotic drug controlled substance. (Title 21, United States Code, Section 952(a); Section 950(a)(1) and Title 18, United States Code, Section 2)).



COUNT SEVENTEEN

On or about the 20th day of August 1973, within the Eastern District of New York, the defendants CARLOS MARTINEZ, SAUL FONTANEZ a/k/a "Guillermo Urribe- Gomez", JUAN GUILLERMO MESA, JANE DOE a/k/a "Miriam", MICHAEL TORRE, GLORIA RODAS and IRIS MALDONADO, did knowingly and intentionally possess with intent to distribute approximately Eight Pounds (8) of cocaine hydrochloride, a Schedule II narcotic drug controlled substance. (Title 21, United States Code, Section 841(a)(1) and Title 18, United States Code, Section 2)).

COUNT EIGHTEEN

On or about the 23rd day of September 1973, within the Eastern District of New York, the defendants CARLOS MARTINEZ, SAUL FONTANEZ a/k/a "Guillermo Urribe--Gomez", JUAN GUILLERMO MESA, JANE DOE a/k/a "Miriam", MICHAEL TORRE, RAFFAELA ALGARIN, JAIME PALMA and MARY FAHERTY, did knowingly and intentionally import into the United States from Venezuela approximately Ten Pounds (10) of cocaine hydrochloride, a Schedule II narcotic drug controlled substance. (Title 12, United States Code, Section 952(a); Section 960(a)(1) and Title 18, United States Code, Section 2)).

COUNT NINETEEN

On or about the 23rd day of September 1973, within the Eastern District of New York, the defendants CARLOS MARTINEZ, SAUL FONTANEZ a/k/a "Guillermo Urribe-Gomez", JUAN GUILLERMO MESA, JANE DOE a/k/a "Miriam", MICHAEL TORRE, RAFFAELA ALGARIN, JAIME PALMA and MARY FAHERTY, did knowingly and intentionally possess with intent to distribute approximately Ten Pounds (10) of cocaine hydrochloride, a Schedule II narcotic drug controlled substance. (Title 21, United States Code, Section 841(a)(1) and Title 18, United States Code, Section 2)).

COUNT TWENTY

On or about the 8th day of October 1973, within the Eastern District of New York, the defendants CARLOS MARTINEZ, SAUL FONTANEZ a/k/a "Guillermo Urribe- Gomez, JUAN GUILLERMO MESA, JANE DOE a/k/a "Miriam", MICHAEL TORRE, GLORIA RODAS, IRIS MALDONADO and JAIME PALMA did knowingly and intentionally import into the United States from Venezuela approximately Ten Pounds (10) of cocaine hydrochloride, a Schedule II narcotic drug controlled substance. (Title 21, United States Code, Section 952(a); Section 960(a)(1) and Title 18, United States Code, Section 2)).

COUNT TWENTY-ONE

On or about the 8th day of October 1973, within the Eastern District of New York, the defendants CARLOS MARTINEZ, SAUL FONTANEZ a/k/a "Guillermo Urribe-Gomez", JUAN GUILLERMO MESA, JANE DOE a/k/a "Miriam", MICHAEL TORRE, GLORIA RODAS, IRIS MALDONADO and JAIME PALMA did knowingly and intentionally possess with intent to distribute approximately Ten Pounds (10) of cocaine hydrochloride, a Schedule II narcotic drug controlled substance. (Title 21, United States Code, Section 841(a)(1) and Title 18, United States Code, Section 2)).

COUNT TWENTY-TWO

On or about the 10th day of November 1973, within the Eastern District of New York, the defendants CARLOS MARTINEZ, SAUL FONTANEZ a/k/a "Guillermo Urribe-Gomez", JUAN GUILLERMO MESA, JANE DOE a/k/a "Miriam", MICHAEL TORRE and MARY FAHERTY did knowingly and intentionally import into the United States from Venezuela approximately Fifteen Pounds (15) of cocaine hydrochloride, a Schedule II narcotic drug controlled substance. (Title 21, United States Code, Section 952(a): Section 960(a)(1) and Title 18, United States Code, Section 2)).

COUNT TWENTY-THREE

On or about the 10th day of November 1973,  
within the Eastern District of New York, the defendants  
CARLOS MARTINEZ, SAUL FONTANEZ a/k/a "Guillermo Urribe-  
Gomez", JUAN GUILLERMO MESA, JANE DOE a/k/a "Miriam",  
MICHAEL TORRE and MARY FAHERTY did knowingly and intentionally  
possess with intent to distribute approximately Fifteen  
Pounds (15) of cocaine hydrochloride, a Schedule II  
narcotic drug controlled substance. (Title 21, United  
States Code, Section 841(a)(1) and Title 18, United States  
Code, Section 2)).

A TRUE BILL

\_\_\_\_\_  
FOREMAN

\_\_\_\_\_  
EDWARD JOHN BOYD V  
United States Attorney  
Eastern District of New York

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK  
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UNITED STATES OF AMERICA

74 CR 25

-against-

Memorandum of Decision  
and Order

CARLOS MARTINEZ,

Defendant.

March 7, 1974  
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Defendant, Carlos Martinez, pursuant to F.R. Crim. P. 16(a)(1), seeks discovery of statements made by witnesses to a government agent reporting conversations with the defendant during the alleged narcotics conspiracy.

Rule 16(a)(1) provides that:

[u]pon motion of a defendant the court may order the attorney for the government to permit the defendant to inspect and copy or photograph any relevant (1) written or recorded statements or confessions made by the defendant . . . with the possession, custody or control of the government . . . .

Defendant, relying on United States v. Percevault, \_\_\_ F. 2d \_\_\_ (2d Cir. January 8, 1974), argues that Rule 16(a)(1) authorizes discovery of defendant's conversations as related by third-party witnesses. In Percevault, the

defendant sought discovery of written or oral post-conspiracy statements or confessions made by co-defendants or co-conspirators whom the government intends to call as witnesses at the trial. The Second Circuit, in reversing the district court, noted that Rule 16 was intended to permit the defendant liberal discovery of his own statements in the government's possession.<sup>/1</sup> The court, however, went on to hold that statements of witnesses are producible only under the limited provisions of the Jencks Act.

Defendant also cites United States v. Crisona, 416 F.2d 107, 114-15 (2d Cir. 1969), United States v. Rosenberg, 299 F.Supp. 1241 (S.D.N.Y. 1969), and United States v. Leighton, 265 F.Supp. 27, 34 (S.D.N.Y. 1967), in support of his demands. These cases, however, stand only for the proposition that pre-arrest as well as post-arrest statements by the defendant are discoverable.

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<sup>/1</sup> Defendant relies on the following language in Percevault:

Rule 16(a) authorizes broad pretrial discovery of the defendant's statements, whether made during or after the commission of the crime charged; to a government agent, to a grand jury, or to anyone else; and whether obtained surreptitiously or voluntarily.

(Slip Opinion at 1275.)

Defendant cites no authority dealing with the precise question at issue here.

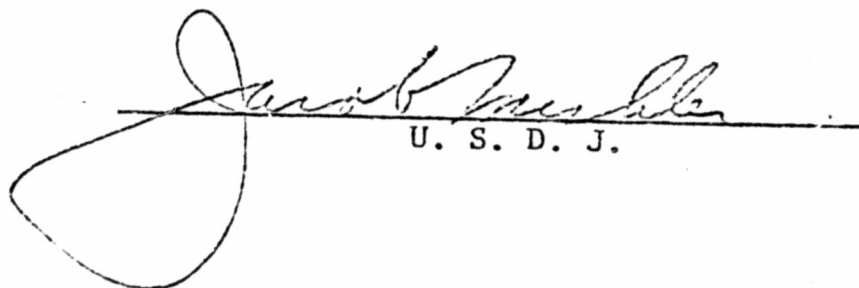
The court finds the reasoning in Percevault to be dispositive of the defendant's claim. In holding that "[t]he Jencks Act . . . is the exclusive vehicle for disclosure of statements made by government witnesses," the Second Circuit noted that:

the considerations which support expansive pretrial discovery of statements made "by the defendant" (Fed. R. Crim. P. 16(a)) are not pertinent to those made by prospective government witnesses. Fear of intimidation of witnesses and concern over efforts to suborn perjury were not flights of fantasy by those who drafted Rule 16.

The same considerations apply in the instant case. See also United States v. Dorfman, 53 F.R.D. 477 (S.D.N.Y. 1971) (written statements made by third parties which include oral statements allegedly made by the defendant to such third parties are not discoverable under Rule 16(a)); United States v. Wilkerson, 456 F.2d 57 (6 Cir. 1972), cert. denied, 408 U.S. 926, 92 S.Ct. 2506 (Rule 16(a) does not contemplate the pretrial discovery by defense counsel of statements made to the government by prospective government witnesses).



The defendant's motion is denied and it is  
SO ORDERED.

  
U. S. D. J.

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

74 CR 25

UNITED STATES OF AMERICA

-against-

Memorandum of Decision

CARLOS MARTINEZ,

Defendant.

July 26, 1974

The defendant waived trial by jury pursuant to Rule 23 of the Federal Rules of Criminal Procedure.

The indictment (filed January 15, 1974) contains 22 counts charging narcotic violations. The conspiracy count (Count 1) charges that between February of 1972 and November 11, 1973, the defendant together with 15 co-defendants, "and others known and unknown to the grand jury" conspired to import cocaine from Columbia, Venezuela and Canada and possessed cocaine with intent to distribute. The substantive counts relate to the importations in early April 1973 (Count 2); April 21, 1973 (Count 4); May 5, 1973 (Count 6); May 13, 1973 (Count 8); June 23, 1973 (Count 10); July 21, 1973 (Count 12); August 5, 1973 (Count 14); August 20, 1973 (Count 16); September 23, 1973 (Count 18); October 8,

1973 (Count 20); and November 10, 1973 (Count 22). Count 3 charges the defendant with possession with intent to distribute cocaine allegedly imported as charged in Count 2, and the other odd numbered counts similarly charge possession with intent to distribute cocaine allegedly imported in the prior numbered even count.

Prior to the trial, defendant moved to dismiss the indictment "...on the ground that the defendant, Carlos Martinez, has been in jeopardy of the offenses charged therein...." The motion papers set forth an indictment returned in the Southern District of New York (Docket No. 73-CR-911) and annexed the three-count indictment charging the defendant and one Hector Ordonez with a conspiracy (Count 1) from June 1, 1973 to the filing of the indictment, i.e., September of 1973; with a sale of approximately 248.3 grams of cocaine on July 13, 1973 (Count 2); and a sale of approximately 682 grams of cocaine on September 18, 1973 (Count 3).

On December 26, 1973, Martinez pleaded guilty to Count 2 of the indictment as part of the plea-bargain. It was agreed that at the time of sentencing, Counts 1 and 3 would be dismissed. On February 1, 1974, the defendant was sentenced in the Southern District of New York on his plea of

guilty to Count 2, and Counts 1 and 3 were dismissed.

After the bench trial this court conducted a hearing to determine the nature and extent of the conspiracy charge in the Southern District indictment and the extent to which, if any, the plea to Count 2 and the consequent dismissal of Counts 1 and 3 affected the Eastern District proceeding. The court finds as follows:

In the latter part of 1971, codefendant Michael Torre met this defendant through another codefendant, Alvaro Hernandez. At that time, Torre was engaged as a building manager for Wellington Associates. Defendant had no permanent place of residence so he boarded at Torre's apartment, first on East 57th Street and then at 94th Street and Madison Avenue in New York City. Sometime in September of 1972, the defendant introduced Torre to the narcotic business when Martinez advised him that he expected the arrival of a suitcase. The defendant arrived with a suitcase, as predicted, in the company of a third party. Torre supplied a screwdriver and a pair of pliers that were used to uncover cocaine concealed in the bottom of the suitcase. The defendant paid Torre approximately \$500 for his part in the delivery of cocaine. The defendant left the Torre apartment to live elsewhere, but the arrange-

ment which had started in September 1972 continued. The defendant delivered cocaine to the Torre apartment in various containers concealing the drug, i.e. the heels of shoes worn by a courier. By November 1972 Torre's role in the conspiracy was established. Since Torre had supervision over the building in which he occupied an apartment, both his apartment and the basement of the building became the hiding place for the cocaine imported by the defendant and others. In that month, the defendant, codefendant Juan Guillermo Mesa and another individual delivered two suitcases to Torre's apartment. The bottom of the suitcases were disassembled exposing the cocaine.

In March 1973, the defendant introduced Torre to codefendant, Saul Fontanez, also known as "Guillermo Urribe-Gomez". Torre was given the additional assignment by the defendant and Fontanez to deliver \$36,000 in bank checks to Mesa's girl friend, codefendant Jane Doe, also known as "Miriam", in Columbia. <sup>/1</sup> Torre, upon delivery of the bank checks

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/1 The method of payment used by codefendants Fontanez, Torre and Mesa was to buy bank checks in denominations of \$5,000 which were issued in blank. The bank checks were turned over to Mesa as advance payment for the shipment. When the shipment was ready, Mesa contacted Martinez who then made arrangements for the delivery of the prepaid cocaine and payment for the next shipment.

to Miriam was given in return a suitcase containing one pound of cocaine. Torre returned to the United States through Miami Airport and delivered the cocaine to the defendant in New York. He received \$2,500 from the defendant for his services as a <sup>/2</sup> courier.

In early April, the defendant discussed with Fontanez and Torre the advisability of employing American citizens as couriers in preference to Columbians. Torre made an effort to employ codefendants Evaristo Quinones and Elba Quinones at a bargain price of \$2,500. When the fee did not attract them, Torre decided to make the trip with his girl friend, codefendant, Ellen Reiner. Before departing from the United States on April 6, 1973, Torre bought four suitcases to be delivered to Mesa in return for four suitcases containing cocaine. Torre returned with Reiner on April 21, 1973 and immediately turned the suitcases over to the defendant and Fontanez. The suitcases were stripped of the covering material and exposed 4 to 5 kilograms of cocaine. Torre received \$8,500 for his services.

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<sup>/2</sup> The defendant instructed Torre to return to the United States on a weekend through Miami since he evaluated the chances of detection to be less at Miami than at John F. Kennedy International Airport (JFK).

Martinez was a frequent visitor at the Torre apartment, often in the company of Fontanez. They discussed a payment of \$50,000 to Mesa for a future cocaine delivery. Torre was given the assignment. Torre left for Caracas, Venezuela from JFK on May 1, 1973. He met Mesa in San Antonio, Venezuela where he turned over the \$50,000 in the form of bank checks and took delivery of suitcases in which cocaine was concealed. He returned on May 5, 1973 and turned the suitcases over to the defendant and Fontanez. After the cocaine was retrieved from its hiding place in the suitcases, it was secreted in Torre's apartment and/or basement.

At the urging of the defendant, Torre again offered the Quinones the opportunity to serve as couriers, and increased the fee to \$5,000. The Quinones accepted the offer and left JFK on May 10, 1973. Torre left on the same flight for Caracas with the sum of \$36,000 in bank checks for payment to Mesa for the next cocaine delivery. The Quinones received suitcases from Mesa and re-entered the United States through the Miami Airport, under the instructions and watchful eye of Torre. The Quinones took the suitcases to their home in New Jersey where they were delivered to the defendant and Fontanez.



The frequent importation of large amounts of cocaine required the enlistment of couriers. The conspirators recognized that repeated entries by the same couriers would arouse suspicion. In early June, the defendant advised Torre that Mesa had cocaine ready for delivery in Venezuela. Torre spoke to his aunt, codefendant, Raffaella Algarin and offered her the opportunity to earn \$2,500. On June 20th Algarin and Reiner left JFK with suitcases purchased by Torre, to be delivered to Mesa at the time he delivered to them suitcases containing the cocaine.

Meanwhile, in June of 1973, the defendant established a close relationship with Ordonez. Ordonez drove a taxicab and spoke English, while the defendant did not speak English. The defendant at times stayed at the Ordonez apartment. Soon the relationship expanded into a business association. Ordonez would accompany the defendant to Torre's apartment, pick up cocaine and drive the defendant to the defendant's purchaser. Ordonez was compensated far beyond the cost of the cab ride. By this time, the defendant, Fontanez and Torre (and, at times, Mesa and others) had formed a joint venture for importing cocaine in which the cocaine was owned in proportion to the amount contributed to the purchase price and



the compensation and expenses paid to couriers. The purchase price was subsequently converted into bank checks and delivered to Mesa for the next cocaine delivery.

When Algarin and Reiner returned to the United States on June 23, 1973 with four suitcases concealing approximately 4-1/2 kilograms of cocaine, the cocaine was hidden in Torre's apartment and basement. In the meantime, Special Agent Michael Levine of the Drug Enforcement Agency was engaged in the investigation of narcotic violations in Bronx County. Levine employed one Abdula Rodriquez as an informant, and Rodriquez led Levine to the defendant. Rodriquez was successful in convincing the defendant to deal with Levine. A sale was arranged for Friday, July 13, 1973. Ordonez and the defendant first went to the Torre apartment and retrieved approximately 250 grams of cocaine from the basement. At that time the defendant and Ordonez lived together in an apartment on Acqueduct Avenue in the Bronx. Levine bought the 250 grams of cocaine from Martinez. This was part of the June 23, 1973 importation.

Torre had made a trip to Venezuela on July 5, 1973 and was abroad on July 13. Torre paid Mesa \$50,000 in blank bank checks in Venezuela for the next delivery. Torre

brought back a kilogram of cocaine that was not purchased by the members of the conspiracy, but <sup>was</sup> an independent transaction between Torre and Mesa.

Prior to August 1, 1973, Mesa advised the defendant that the cocaine, which was prepaid, was ready for delivery. Torre gave the delivery assignment to codefendant Gloria Rodas (Algarin's daughter) and her friend, codefendant, Iris Maldonado. On August 1, 1973 Rodas and Maldonado left John F. Kennedy with four new suitcases purchased by Torre for delivery to Mesa when they received the suitcases containing cocaine. Rodas and Maldonado received the suitcases from "Miriam" and returned with the suitcases containing the cocaine at John F. Kennedy on August 7, 1973. The couriers gave the suitcases to the defendant, Fontanez and Torre, and received the usual fee of \$2,500 each.

Codefendant Mary Faherty was employed as Torre's secretary in the management of the building located at 94th Street and Madison Avenue. She advised Torre that she was interested in making extra money and agreed to act as a courier. Defendant advised Torre that Mesa had contacted him and that the cocaine was ready for delivery. Mrs. Faherty and her son, Steven, together with Algarin, left John F. Kennedy on September 20, 1973 and returned three

days later with six suitcases and a hatbox concealing approximately 6 to 7 kilograms of cocaine.

The defendant was arrested on September 17th in front of the premises in which he occupied an apartment with Ordonez. Ordonez witnessed, or was advised of the defendant's arrest, and took flight. He remained a fugitive until he was apprehended sometime in December, 1973. Torre first became aware of the defendant's arrest in October of 1973. The defendant, while in custody pending trial of the Southern District charges, kept in contact with both Fontanez and Torre. He authorized both to invest the proceeds of the sale of his portion of the cocaine in future deliveries. Torre and Fontanez were in communication with defendant's wife and agreed to the participation by the defendant for cocaine to be imported into the country. Both Fontanez and Torre visited the defendant at the Federal House of Detention at West Street, New York City, for the purpose of discussing the importations of cocaine.

On October 8, 1973, Rodas and Maldonado brought approximately 4-1/2 kilograms of cocaine into the country for the defendant, Fontanez, Mesa and Torre. Torre gave codefendant Jaime Palma an interest in this delivery of the

cocaine. In early November of 1973, Fontanez and Mesa advised Torre that a substantial quantity of cocaine was ready for delivery in Venezuela. Torre hired the Fahertys, Mary, Francis (husband and wife) and their son, Steven, as the couriers. The Fahertys left John F. Kennedy on November 8, 1973 and returned to John F. Kennedy with 7 suitcases in which approximately 8 kilograms of cocaine were concealed. On November 8, 1973 at approximately 8:00 P. M. their bags were examined and an alert customs inspector discovered the false bottoms. The Fahertys were immediately placed under arrest and soon after arrest agreed to cooperate with the authorities. Torre was arrested the next morning at the Faherty home when he attempted to obtain delivery.

The Government performed its promise to move to dismiss Counts 1 and 3 of the Southern District indictment after sentence on the guilty plea to Count 2. Santobello v. New York, 404 U.S. 257, 92 S.Ct. 495 (1971). The consequence of the dismissal of Count 1 (the conspiracy count) is logically to bar to a later prosecution of that count. It is immaterial under the facts of this case whether the bar rests on a double jeopardy concept (i.e., that the dismissal was "with prejudice") or that the bargain implied a promise

by the Government not to prosecute for the same offense. The guide to an understanding of the effect of the dismissal is found in cases dealing with the Fifth Amendment right not ". . . to be twice put in jeopardy of life or limb" for the same offense.

The conspiracy charged in the Southern District of New York was during the term of the Eastern District conspiracy dealing in cocaine imported by the members of the Eastern District conspiracy. The scope of the Eastern District conspiracy as to time, activities and membership was broader than that charged in the Southern District. Ordóñez was a member of the Eastern District conspiracy, though not named. The Court of Appeals in United States v. Cioffi, 487 F.2d 492 (2 Cir. 1973), points to the trend that would bar subsequent prosecutions for "offenses arising out of the same criminal episode or transaction." 487 F.2d at 497. Judge Friendly distinguished United States v. Nathan, 476 F.2d 456, 458-459 (2 Cir. 1973), on the ground that in Nathan, there was an "essential difference in the nature of the conspiracies and substantive offenses." 487 F.2d at 497 n.6. Here the Southern District conspiracy was a part of the conspiracy charged in the Eastern District. Both

conspiracies charged a violation of 21 U.S.C. § 846. The holding of Cioffi and Nathan would bar prosecution of Count 1 of this indictment and as such Count 1 is dismissed.

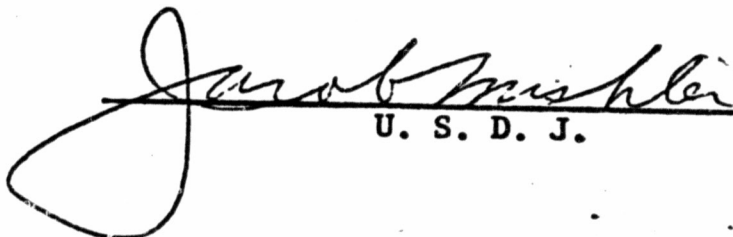
Cioffi did not indicate, however, that double jeopardy protection is to be extended to the substantive crimes committed during the conspiracy. Judge Friendly noted in Cioffi that double jeopardy rights do not attach to a conspiracy charge by reason of an acquittal on a substantive charge. 487 F.2d at 498. A conviction on a conspiracy charge will not give double jeopardy protection on the substantive charges committed during the conspiracy and in the business of the conspiracy.

The Government has failed to prove the defendant's participation in the importation and possession of cocaine in Counts 12, 13, 16 and 17, and those counts are dismissed. The court finds that the defendant knowingly and willfully aided and abetted the importation of cocaine at the times set forth in Counts 2, 4, 6, 8, 10, 14 and 18 in arranging with Mesa for the importation, in encouraging Torre to import cocaine and encouraging Torre to hire couriers to import cocaine, and in contributing the monies for the purchase price of the cocaine and courier's fees and expenses. The

defendant aided and abetted in the importation of cocaine in Counts 20 and 22 by advising and encouraging Torre and Fontanez to import cocaine with him and in contributing a portion of the purchase price and courier's fees and expenses.

The court finds the defendant possessed the cocaine at the times and places set forth in Counts 3, 5, 7, 9, 11, 15 and 19, with intent to distribute the said cocaine and that the defendant constructively possessed the cocaine as set forth in Count 21.

The court findings the defendant, Carlos Martinez, guilty of Counts 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 14, 15, 18, 19, 20, 21 and 22.

  
U. S. D. J.





# 74-2055

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**United States Court of Appeals**  
**FOR THE SECOND CIRCUIT**

**Docket No. 74-2055**

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UNITED STATES OF AMERICA,

*Appellee,*

—against—

CARLOS MARTINEZ,

*Appellant.*

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK

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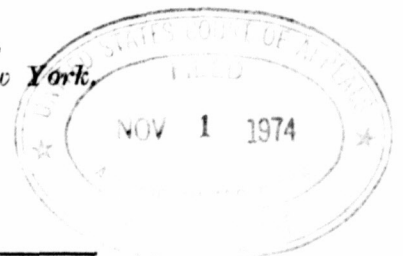
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**GOVERNMENT'S APPENDIX**

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DAVID G. TRAGER,  
*United States Attorney,*  
*Eastern District of New York,*



**PAGINATION AS IN ORIGINAL COPY**

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

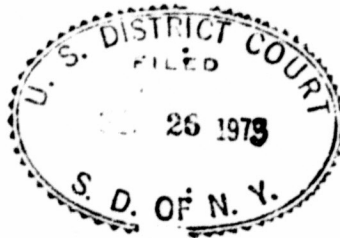
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73 CRIM. 911

UNITED STATES OF AMERICA,

-v-

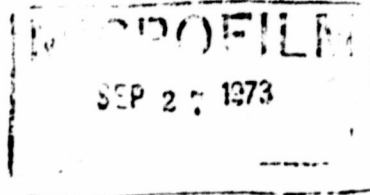
LUIS CARLOS MARTINEZ and  
HECTOR ORDONEZ,



INDICTMENT

73 Cr.

Defendants



The Grand Jury charges:

1. From on or about the 1st day of June, 1973,  
and continuously thereafter up to and including the date of  
the filing of this indictment, in the Southern District of  
New York,

LUIS CARLOS MARTINEZ and  
HECTOR ORDONEZ,

the defendants and others to the Grand Jury unknown, unlaw-  
fully, intentionally and knowingly combined, conspired, confederated  
and agreed together and with each other to violate Sections 812,  
841(a)(1) and 841(b)(1)(A) of Title 21, United States Code.

2. It was part of said conspiracy that the said  
defendants unlawfully, intentionally and knowingly would distribute  
and possess with intent to distribute Schedule I and II  
narcotic drug controlled substances the exact amount thereof  
being to the Grand Jury unknown in violation of Sections 812,  
841(a)(1) and 841(b)(1)(A) of Title 21, United States Code.

In pursuance of the said conspiracy and to effect the objects thereof, the following overt acts were committed in the Southern District of New York:

- (1) On or about July 13, 1973, the defendant, LUIS CARLOS MARTINEZ delivered to agents of the Drug Enforcement Administration approximately 1/2 pound of cocaine hydrochloride.
- (2) On or about July 16, 1973 defendants LUIS CARLOS MARTINEZ and HECTOR ORDONEZ met with Special Agents of the Drug Enforcement Administration in the Ideal Restaurant, Southwest corner of 109th Street and Broadway, New York.

(Title 21, United States Code, Section 846)."

The Grand Jury further charges:

On or about the 13th day of July, 1973,

in the Southern District of New York,

LUIS CARLOS MARTINEZ and

HECTOR ORDONEZ,

the defendants, unlawfully, wilfully and knowingly did  
distribute and possess with intent to distribute a  
Schedule II narcotic drug controlled substance, to wit,

approximately 248.3 grams of cocaine hydrochloride.

(Title 21, United States Code, Sections 812,  
841(a)(1) and 841(b)(1)(A) (Title 18, United  
States Code, Section 2.)

THIRD COUNT

The Grand Jury further charges:

On or about the 18th day of September, 1973  
in the Southern District of New York,

LUIS CARLOS MARTINEZ and  
HECTOR ORDONEZ,

the defendants , unlawfully, intentionally and knowingly  
did possess with intent to distribute, a Schedule II  
narcotic drug controlled substance, to wit,  
approximately 602 grams of cocaine hydrochloride.

(Title 21, United States Code, Sections 812,  
841(a)(1) and 841(b)(1)(A.); (Title 18,  
United States Code, Section 2.)

Foreman

Paul J. Curran

PAUL J. CURRAN  
United States Attorney

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

3 -----x

4 United States of America, :

5 -against- :

73 Cr. 911

6 Luis Carlos Martinez and :  
7 Hector Ordonez, :

8 Defendants.

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9  
10 December 26, 1973  
10:00 a.m.

11 Before:  
12 Hon. Morris E. Lasker, District Judge.

13 Appearances:

14 Paul J. Curran, Esq.  
United States Attorney for the  
Southern District of New York  
15 Dan Pykett, Esq., Assistant United States Attorney.

16 John Curley, Esq.  
17 Attorney for Defendant Ordonez  
(Legal Aid)

18 Kassner & Detsky, Esqs.  
19 Attorneys for Defendant Martinez  
Paul Warburg, Esq., of Counsel.

20 Also present:

21 Gerardo Sanchez, interpreter.  
22 Michael Levine.

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THE COURT: Good morning everyone.

I believe there is an interpreter required in this proceeding; isn't that right?

MR. PYKETT: That is correct, your Honor.

THE COURT: Would you step forward, please.

Would you please administer the oath to the interpreter.

(Gerardo Sanchez, the interpreter, was duly sworn)

THE COURT: Call the case, please.

(Case called)

MR. PYKETT: The government is ready, your Honor.

MR. CURLEY: The defendant Hector Ordonez is present and ready.

MR. WARBURG: The defendant Martinez is ready, your Honor.

Your Honor, I believe we have worked out a disposition as far as he is concerned.

THE COURT: Very good.

Do you wish to make an application in that regard?

MR. WARBURG: Yes, your Honor.

At this time on behalf of Mr. Martinez I would

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2 move to permit him to withdraw his previously entered plea  
3 of not guilty and he would at this time offer to plead  
4 guilty to count 2 of the indictment.

5 THE COURT: All right.

6 Mr. Warburg, how long have you represented Mr.  
7 Martinez in this case?

8 Would you translate as I go along, please.

9 MR. WARBURG: Your Honor, I believe since  
10 around the first of October.

11 THE COURT: How much time have you spent with  
12 him in discussing this case?

13 MR. WARBURG: I would say a minimum of six  
14 hours.

15 THE COURT: Are you satisfied that he understands  
16 the nature of the charge against him in count 2?

17 MR. WARBURG: I am, your Honor.

18 THE COURT: Are you satisfied that he under-  
19 stands the nature of his rights to a jury trial here?

20 MR. WARBURG: Yes, sir. I just explained that  
21 again today.

22 THE COURT: Have you also advised Mr. Martinez  
23 what the maximum penalty may be for pleading guilty to this  
24 charge?

25 MR. WARBURG: Yes, your Honor, I have.

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2 THE COURT: Have you explained to him it could  
3 be a 15 year sentence and a fine and three year parole  
4 period at the end of any term of custody that is imposed?

5 MR. WARBURG: Yes, your Honor.

6 THE COURT: That is on the assumption, of  
7 course, that he has not previously been convicted of a  
8 federal offense involving narcotics.

9 As far as you know, has he been?

10 MR. WARBURG: As far as I know and from what  
11 the government has provided me, there appears that there  
12 is no previous conviction as far as narcotics offense is  
13 concerned.

14 THE COURT: Is that correct as far as you  
15 understand?

16 MR. PYKETT: That is correct, your Honor.

17 THE COURT: I would like to question Mr. Martinez  
18 himself now.

19 BY THE COURT:

20 Q Mr. Martinez, how old are you?

21 A (Through the interpreter) Thirty-six years.

22 Q How much education have you had?

23 A Three years.

24 Q Are you in good health?

25 A Yes.

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2 Q Have you ever been addicted to drugs or alcohol?

3 A Very little alcohol.

4 Q Are you under the influence of any drug or  
5 alcohol at the present time?

6 A No.

7 Q Mr. Warburg says he has represented you since  
8 October and he has spent at least six hours with you going  
9 over this case.

10 Have you been satisfied with the services that  
11 Mr. Warburg has rendered to you as a lawyer?

12 A Yes.

13 Q Mr. Warburg says that you wish to plead guilty  
14 to count 2 of this indictment. I will tell you what count  
15 2 says to be sure that that is the count to which you  
16 wish to plead guilty.

17 Count 2 states that on or about the 13th of July  
18 1973, that is about five and-a-half months ago, you and  
19 Mr. Ordonez either distributed or had in your possession  
20 with the intention of distributing approximately 248.3  
21 grams of cocaine hydrochloride.

22 Is that the charge to which you wish to plead  
23 guilty?

24 A Yes, sir.

25 Q Will you tell me in your own words, Mr. Martinez

just what you did that renders you guilty of that charge.

A That I did give 250 grams of cocaine to the agent.

Q Did you receive or were you to receive any money for doing so?

A Yes.

Q All right.

Do you understand, Mr. Martinez, that you have a right to be tried on this charge by a jury of 12 men and women?

A Yes.

Q And do you know that you could not be found guilty of this charge if you were tried by a jury unless all the members of the jury agreed that you have been proven guilty beyond a reasonable doubt?

A Yes.

Q Do you know that at such a trial your lawyer would have the right to cross examine any witnesses against you and you would have the right to face them or confront them?

A Yes.

Q Are you willing to give up your right to a jury trial?

A Yes.

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Q Do you know that if I accept your plea I can impose the same sentence on you that could be imposed if you were tried and found guilty by a jury?

A Yes.

Q Do you know that the maximum sentence to which you may be sentenced is a 15 year prison term, a \$25,000 fine and a three year parole period at the end of any imprisonment?

A Yes.

Q Has anybody told you that if you plead guilty you will receive a shorter sentence than you would if you did not plead guilty?

A No.

Q Has anybody made any promises to you as to what sentence will be imposed if I accept your plea of guilty?

A No.

Q Do you know that if I accept your plea of guilty you would have no right to appeal to a higher Court from any lawfully imposed sentence?

A Yes.

Q Do you know that If I accept your plea of guilty you have no automatic right to withdraw your plea of guilty?

A Yes.

Q Has anybody threatened you that if you did not

2 plead guilty you or anybody close to you would be harmed in  
3 any way?

4 A No.

5 Q Why are you pleading guilty?

6 A Because I recognize that I am guilty.

7 Q All right.

8 Are there any questions that you would like to  
9 ask me?

10 A No.

11 THE COURT: All right.

12 Gentlemen, I am satisfied that Mr. Martinez  
13 understands the nature of the charges against him in count  
14 2, that he understands the nature of his rights to a jury  
15 trial and otherwise, that he has intelligently and  
16 voluntarily given up the right to a jury trial, that he  
17 has intelligently and voluntarily pleaded guilty to the charge  
18 here and that there is a factual basis for his doing so,  
19 and I will accept the plea of guilty.

20 MR. WARBURG: Your Honor, may I just add that  
21 the only representation that I made to Mr. Martinez is that  
22 after he had entered his plea of guilty the government would  
23 agree to dismiss the two remaining counts of the indict-  
24 ment.

25 THE COURT: I think that that is a reasonable

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2 representation, although I don't know whether it's put in  
3 terms of the government dismissing those counts at this  
4 time or at the time of sentencing.

5 It is the normal procedure in this Court that  
6 when a man is sentenced on a plea of guilty, the other  
7 charges against him in the indictment are withdrawn by the  
8 government or dismissed with the consent of the government.

9 Before we leave we will set a sentencing date  
10 here.

11 Mr. Martinez is in custody, as I understand  
12 it.

13 MR. WARBURG: That is correct.

14 THE COURT: He should be advised, would you tell  
15 him, that I am aware of the fact that he has been in custody  
16 since September and I regret that he was in custody prior  
17 to his either being tried or pleading guilty, but that he  
18 will be given credit for the time he has served in custody  
19 already towards whatever sentence is imposed upon him.

20 All right.

21 (Pause)

22 THE COURT: What about Mr. Ordonez?

23 Mr. Curley.

24 MR. CURLEY: Good morning, your Honor. This  
25 matter is a little more complicated, and I would like to



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take a few moments to advise the Court of the background.

THE COURT: Please do.

MR. CURLEY: The indictment which is before the Court refers to dates -- the conspiracy starting in June and overt acts in July and substantive counts in July and September of 1973.

THE COURT: Yes.

MR. CURLEY: However, it is my understanding that the defendant in this case was not arrested on the indictment or on the charges until approximately December 10th.

THE COURT: You are speaking of Mr. Ordonez?

MR. CURLEY: Yes, your Honor.

He was arraigned before the magistrate and at that time he was assigned counsel, and a few days later was interviewed by me with the assistance of an interpreter.

THE COURT: You were assigned counsel?

MR. CURLEY: Yes, your Honor.

THE COURT: Yes.

MR. CURLEY: I have spent several hours discussing the indictment with him and have attempted to learn of any witnesses or any defenses that Mr. Ordonez might have. Through the interpreter he has not been able to give me any assistance.

He has advised me as a result of our conversations as I have forwarded parts of the government's case --

THE COURT: What do you mean by "forwarded"?

MR. CURLEY: Your Honor, I have had some discussions with the prosecutor under our informal rules concerning discovery, or our formal rules concerning informal discovery.

I have obtained the defendant's recorded statement on the U.S. Attorney's official form concerning his pre-arraignment interview and I have been given the substance of apparently statements made to the arresting agents at the time of his plea.

THE COURT: Have you informed the defendant of the information you have received from the government?

MR. CURLEY: Yes, your Honor, and that is what I have forwarded through the interpreter to the defendant.

It appears to be a factual case plus circumstantial evidence.

Mr. Ordonez has conceded presence with the co-defendant, Mr. Martinez, on several occasions and has indicated that he would dispute some of the factual discussions or allegations that the government has advised me would be presented during his trial.

THE COURT: Can you tell me what he would

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2 dispute?

3 MR. CURLEY: Yes, your Honor. While conceding  
4 presence with Mr. Martinez, he would dispute an active par-  
5 ticipation in various discussions and transactions.

6 He has advised me, your Honor, that he has come  
7 to the conclusion that he would be unsuccessful in light of  
8 the fact that the agent or agents would be contradicting him  
9 as I have indicated the government's case would show.

10 He has therefore advised me to ask the Court to  
11 allow him to plead guilty to count 2 of this indictment as  
12 Mr. Martinez has done.

13 I have advised him that it is possible, and I  
14 would ask the prosecutor to state as we say in open court to  
15 your Honor the nature and extent of the government's proof  
16 against my client.

17 At that time the Court would decide whether it  
18 would accept the plea of guilty from Mr. Ordenez.

19 THE COURT: All right, Mr. Curley.

20 Mr. Ordenez, have you understood through the  
21 interpreter everything that Mr. Curley has said so far?

22 DEFENDANT ORDONEZ: Yes.

23 THE COURT: All right.

24 Mr. Pykett, in the circumstances described by  
25 Mr. Curley, I would ask you to outline for me what the

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2 Government would expect to prove, and I want the interpreter  
3 to be sure to interpret your statement so that Mr. Ordonez  
4 is aware of what information before I ask him any questions.

5 MR. PYKETT: Your Honor, on July the 13th  
6 special agent Michael Levine, who is present in Court here  
7 today, sitting here with the green jacket, met Mr. Martinez  
8 and negotiated for the purchase of 250 grams of cocaine.

9 At that time, your Honor, Mr. Martinez left the  
10 company of the agent and returned some half an hour later  
11 walking down the street with Mr. Ordonez, and Mr. Martinez  
12 subsequently delivered the 250 grams of cocaine to the  
13 under cover agent.

14 At that time, your Honor, payment was not made for  
15 the 250 grams. Rather three days later, on July the 16th, the  
16 under cover agent returned and met with Mr. Ordonez and Mr.  
17 Martinez at a restaurant, and at that time Mr. Martinez was  
18 given \$6,600 under the table.

19 Mr. Martinez asked the question, "How much is  
20 there"?

21 THE COURT: Mr. Martinez did?

22 MR. PYKETT: Yes, sir. And the reply was,  
23 "sixty-six".

24 When Mr. Martinez looked puzzled, Mr. Ordonez  
25 said "\$6,600".

There was some discussion in Mr. Ordóñez' presence of future deliveries of cocaine, although Mr. Ordóñez did not take part in those discussions.

Subsequently agents placed Mr. Martínez under arrest on I believe September 16th of this year in front of his apartment building.

Mr. Martínez and Mr. Ordóñez reside together in the same apartment, apartment 6-H at 2320 Aqueduct Avenue, which is very close to the area where the first delivery was made of the cocaine.

Upon placing Mr. Martínez under arrest, they asked him to accompany them upstairs to apartment 6-H for the purpose of placing Mr. Ordóñez under arrest.

When they arrived at the apartment Mr. Martínez unlocked the door. However, it was bolted, shut or chained, and Mr. Martínez yelled something in Spanish which the agents did not understand.

Following that they heard a commotion in the apartment and heard what they believed to be a window opening. They thereupon broke down the door, entered the apartment, only to find that no one was present in the apartment at the time. They did look out the window of the apartment, rear window of the apartment, however, and observed on a roof approximately 3 floors below this apartment

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2 a shoebox. Upon retrieving the shoebox they found it to  
3 contain some 600 grams of cocaine. Also in the shoebox was  
4 an immigration referral slip with the name of Hector  
5 Ordonez on it in the same box where the 3 packages of cocaine  
6 which totaled 600 grams was located.

7 Mr. Ordonez was not located. However, in  
8 December when he was finally arrested Mr. Ordonez made  
9 admissions to the agent that he had been in the apartment on  
10 the occasion when the agents had to break down the door.

11 THE COURT: Admission made to Mr. Levine?

12 MR. PYKETT: Yes, made to Mr. Levine, yes,  
13 who speaks Spanish, and advised the defendant of his rights  
14 prior to the admission being made.

15 In addition, he made similar admissions to the  
16 assistant U.S. Attorney who interviewed him prior to his  
17 arraignment.

18 THE COURT: Who was that?

19 MR. PYKETT: Mr. Batchelder.

20 When he was arrested Mr. Ordonez further used a  
21 false name, your Honor, until he was introduced to special  
22 agent Levine, at which time he admitted that he was Hector  
23 Ordonez and he, in fact, had used a false name because he  
24 was afraid. That is the answer he gave.

25 There is other evidence, your Honor, which I am

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2 not in a position to disclose at this time. That in  
3 substance is I believe a prima facie case on behalf of the  
4 government against Mr. Ordonez.

5 THE COURT: Mr. Levine, would you be prepared to  
6 testify to the facts as Mr. Pykett has stated them under  
7 oath?

8 MR. LEVINE: Yes, I would, your Honor.

9 BY THE COURT:

10 Q Mr. Ordonez, how old are you?

11 A (Through the interpreter) I am to be 32 years  
12 old.

13 Q How much education have you had?

14 A Four years.

15 Q Where did you grow up?

16 A In Columbia.

17 Q How long have you been in the United States?

18 A Since April 5, 1971.

19 Q Have you held any jobs here?

20 A Yes, I have been working all this time.

21 Q What kind of work do you do?

22 A I was a cab driver and I used to work in a factory  
23 shop as a welding operator.

24 Q What was your job in Columbia?

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2 A I also did drivers work and welding.

3 Q Are you in good health?

4 A Yes.

5 Q Have you ever been addicted to drugs or  
6 alcohol?

7 A No.

8 Q Are you under the influence of any drug or  
9 sedative at this time?

10 A No.

11 Q Mr. Curley says that he has discussed this case  
12 with you for a number of hours since you were arrested in  
13 the middle of December.14 Have you been satisfied with the services that  
15 Mr. Curley has rendered you as a lawyer?

16 A Yes.

17 Q And he says that you wish to plead guilty to  
18 count 2 of this indictment which I will read to you to  
19 be sure it is what you do want to plead guilty to.20 Count 2 says that on July 13th you and Mr.  
21 Martinez had in your possession with the intent of distributing  
22 or that you did distribute 248.3 grams of cocaine hydro-  
23 chloride.24 Is that the charge to which you wish to plead  
25 guilty?



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2 A Yes.

3 Q Do you wish to make any statement about your  
4 participation in the events charged here?

5 A Only if it is necessary.

6 Q Well, is it correct that you were present with  
7 Mr. Martinez on this day when Mr. Martinez sold the narcotics to  
8 Mr. Levine?9 A I was present when he received the money and I  
10 learned that it was narcotics, cocaine deal.11 Q Did you hear the statement made by Mr. Pykett  
12 about the information against you?

13 A Yes, I heard.

14 Q Do you agree that the facts were correctly  
15 stated by him?

16 A No.

17 Q In what respect do you dispute them?

18 A I only saw him once.

19 Q Who, Mr. Levine?

20 A Yes.

21 Q Is there any information which you wish to  
22 dispute the facts stated by Mr. Pykett?

23 A Nothing else.

24 Q Do you know that you have a right to be tried on  
25 this charge by a jury of 12 men and women?

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2 A Yes.

3 Q Do you know that you could tell them your story  
4 if you wish to, but you would not be required to?

5 A Yes.

6 Q Do you know that your lawyer could challenge  
7 the government witnesses and you could face them in Court?

8 A Yes.

9 Q Do you know that under American Law you could  
10 not be found guilty by the jury unless all of them agreed  
11 that the charges had been proven against you beyond a  
12 reasonable doubt?

13 A Yes.

14 Q Are you willing to give up the right to be  
15 tried by a jury?

16 A Yes.

17 Q Do you know that If I accept your plea of guilty  
18 I can impose on you the same sentence that could be imposed  
19 if you were found guilty by a jury?

20 A Yes.

21 Q Do you know that that sentence could be as much  
22 as 15 years in jail or a \$25,000 fine and a 3 year special  
23 parole period?

24 A Yes.

25 Q Has anyone told you that if you plead guilty

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2 you would receive a lighter sentence than if you did not  
3 plead guilty?

4 A No.

5 Q Has anybody promised you anything as a result  
6 of pleading guilty?

7 A No.

8 Q Has anybody threatened you that if you did not  
9 plead guilty you or your family or anybody close to you  
10 would be harmed in any way?

11 A No.

12 Q Would you tell me why you wish to plead  
13 guilty.

14 A Because I consider myself guilty.

15 Q All right.

16 Are there any questions that you wish to ask  
17 me?

18 A No.

19 THE COURT: Any other questions that counsel  
20 wish to have put to Mr. Ordonez?

21 MR. CURLEY: I have no questions, your Honor.  
22 I would like to say one or two things.

23 THE COURT: Do you have any questions?

24 MR. PYKETT: I have no questions.

25 THE COURT: What is that, Mr. Curley?

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2 MR. CURLEY: I know of no defense in law or  
3 in fact. I do not know of any witnesses who can aid the  
4 defendant.

5 THE COURT: All right, gentlemen.

6 MR. CURLEY: I have advised the defendant,  
7 your Honor, that he has the right to compulsory process  
8 even though he has no money.

9 He has advised me that he can not recall any  
10 persons who could assist him, but that if he were to think  
11 of any, they would be in a similar situation as being illegal  
12 aliens and he would not expect them to help him even if they  
13 were directed by the Court to do so.

14 I have also advised the defendant, your Honor,  
15 that regardless of the sentence imposed by the Court,  
16 he would undoubtedly be deported at the appropriate time  
17 by the immigration authorities.

18 THE COURT: Thank you, Mr. Curley.

19 Gentlemen, I am satisfied on the basis of Mr.  
20 Curley's original statement, Mr. Pykett's statement, Mr.  
21 Levine's representation to the Court that he would testify  
22 to the facts asserted by Mr. Pykett, Mr. Ordonez' answers to my  
23 questions and Mr. Curley's second statement that Mr.  
24 Ordonez fully understands the nature of the charges against  
25 him here and understands the nature of his rights, including

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2 his rights to a jury trial as well as the nature and  
3 consequences of pleading guilty to this charge and that he  
4 has intelligently and voluntarily waived his rights to a  
5 jury trial and otherwise, that he has intelligently and  
6 voluntarily pleaded guilty to this charge in count 2 and  
7 that there is a factual basis for the charges against him.

8 I will accept the plea of guilty.

9 MR. CURLEY: Mr. Ordonez is in jail in lieu of  
10 \$100,000 bail set by the magistrate on December 10th, your  
11 Honor. He apparently has no assets at all.

12 We make no bail application at this time.

13 THE COURT: I think it is in the interests of  
14 both men here for us to get as early as possible a pre-  
15 sentence report so sentencing can come as soon as possible.

16 If you two gentlemen will wait for just a moment,  
17 I will check with my chambers to find out when I can set the  
18 sentencing date for and I will advise you.

19 Is there anything further, gentlemen?

20 MR. PYKETT: No, your Honor.

21 THE COURT: Thank you.

22 (Recess)

23 (In the robing room)

24 THE COURT: Sentencing will be on February 1st  
25 at 9:45, Friday, in room 619.

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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:  
UNITED STATES OF AMERICA,  
:  
vs.  
:  
LUIS MARTINEZ and  
HECTOR ORDONEZ,  
:  
Defendants.  
:  
----- X

73 Crim. 911

February 1, 1974  
10:00 a.m.

Before:

HON. MORRIS E. LASKER,

District Judge.

APPEARANCES:

PAUL J. CURRAN, ESQ.,  
United States Attorney for the  
Southern District of New York  
DANIEL PYKETT, ESQ.,  
Assistant United States Attorney.

PAUL WARBURGH, ESQ.,  
Attorney for Defendant Luis Martinez.

JOHN CURLEY, ESQ.,  
Attorney for Defendant Hector Ordenez.

Also Present:

MR. GERARD SANCHEZ,  
MS. CONSUELO VALENCIA,  
Official Spanish Interpreters.

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2 THE CLERK: United States of America versus Luis  
3 Martinez and Hector Ordonez. Is the Government ready?

4 MR. PYKETT: Government ready.

5 MR. WARBURGH: Defendant ready.

6 MR. CURLEY: Defendant Ordonez ready.

7 THE COURT: Madam Clerk, will you swear the  
8 interpreter, please?

9 THE CLERK: There are two interpreters.

10 THE COURT: Are there different languages?

11 MR. CURLEY: No. I believe co-counsel has retained  
12 his own interpreter and the interpreter for Mr. Ordonez is  
13 supplied by the Government.

14 G E R A R D S A N C H E Z, was duly sworn as official  
15 Spanish interpreter:

16 C O N S U E L O V A L E N C I Z, was duly sworn as  
17 official Spanish interpreter:

18 MR. CURLEY: Your Honor, may I proceed first because  
19 I am on trial before Judge Duffy?

20 THE COURT: You may. Is there anything, Mr. Pykett,  
21 that you wish to bring to my attention that you believe has  
22 not been brought to my attention? As you recall, I took the  
23 pleas of guilty here and I have had the normally detailed  
24 pre-sentence reports.

25 MR. PYKETT: No, your Honor, I have nothing further

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2 to add.

3 THE COURT: Mr. Curley?

4 MR. CURLEY: Good morning, your Honor. At the time  
5 the plea of guilty was entered, I did make an extensive comment  
6 to the Court because of some of the peculiar facts in this  
7 case, and since I did speak at length I will speak more briefly  
8 today.

9 In addition, today I have a cold. But, the two  
10 defendants in this case were alleged to have sold narcotics to  
11 an undercover agent. As I understand it, my client was basic-  
12 ally an aider and abettor and a participant with Mr. Martinez  
13 in the transaction in question.

14 At the time in the summer, in July and later on, I  
15 believe it was September, when the agents decided to make an  
16 arrest, they allege that my client escaped from the residence  
17 on Aqueduct Avenue in the Bronx, so when Mr. Martinez was  
18 arrested, my client was classified as a fugitive.

19 An indictment was obtained against Mr. Martinez and  
20 the defendant, and Mr. Martinez pled not guilty and the matter  
21 was assigned to your Honor. A few weeks before a tentative  
22 trial date was set, my client was arrested.

23 I had several discussions with him, all, of course,  
24 were through an interpreter, and he indicated to me that he  
25 wished to enter a plea of guilty. At the time he entered the



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2 plea of guilty he told your Honor what he had done and the  
3 Government indicated ~~what~~ its proof would be. Yesterday I  
4 spent some time reviewing the probation report with the consent  
5 of the Court, and I found out most of the facts that I had  
6 learned from my client, from the proceedings at the time the  
7 plea of guilty was entered, what I knew about the case, and my  
8 client's background was adequately reflected in the probation  
9 report. I think the Court is aware of as much about this case  
10 as I am.

11 I have asked my client this morning if there is  
12 anything else that he wishes to add to what we have brought to  
13 your Honor's attention to date, and he has advised me that  
14 there is nothing else. I mention that the Court is aware of  
15 his relationship with his wife from whom he is separated, lives  
16 in Bronx County, the other woman, Mrs. Montez, lives in Kings  
17 County, his family in South America.

18 The defendant has been in custody in lieu of bail  
19 since his arrest on this charge. My understanding at the time  
20 of his arrest was that a detainer would be lodged, his status  
21 was that of an illegal alien in this country, and deportation  
22 proceedings would proceed, regardless of the outcome of the  
23 imposition of sentence by your Honor.

24 Since this is a narcotics case, I am sure that the  
25 deportation proceedings will follow expeditiously, and the

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2 defendant will be deported. I think the question indicated in  
3 the probation report is that if the defendant is to be  
4 committed to a federal prison, how long the period of time  
5 would be before he would be transferred to South America.

6 The defendant, your Honor, has basically asked me to  
7 ask the Court to be as lenient as possible in imposing  
8 sentence upon him, and in view of the fact that the Court is  
9 aware of his age and background, he has been in custody since  
10 the time of his arrest, I would suggest to the Court that no  
11 significant purpose beyond the keeping of a convicted defendant  
12 in custody would be served by an extensive period of incarceration  
13 at this time.

14 Other than a response to any questions of the Court,  
15 I have nothing further to say at this time.

16 THE COURT: Thank you, Mr. Curley. Mr. Ordonez,  
17 under American law you have the right at this time to say  
18 anything you wish to the Court as to what sentence should be  
19 imposed on you in connection with this case. I would be very  
20 glad to hear anything you have to say.

21 Is there anything you wish to tell me?

22 DEFENDANT ORDONEZ: No, your Honor.

23 THE COURT: Mr. Ordonez, you stand convicted on your  
24 own plea of guilty of possessing cocaine with intent to dis-  
25 tribute it. The possible penalty here is 15 years in jail and

2 and a \$25,000 fine, plus a three-year special parole period.

3           Against you stands the nature of the crime itself;  
4 participation at least to a substantial extent and enough to  
5 satisfy me that your plea of guilty is a valid plea; your  
6 transaction involving 248 grams of cocaine; and it is difficult  
7 for me to believe that you were not aware of the fact and  
8 connected with the 600 grams of cocaine which were found in the  
9 apartment from which you left by the window when the police  
10 came.

11           Against you also is the fact, according to my  
12 reports, that neither you nor Mr. Martinez have been of any  
13 assistance whatsoever to the public authorities in explaining  
14 where these narcotics came from, so that further protection of  
15 the public could be afforded by trying to arrest, try and con-  
16 vict your sources.

17           A further count against you, as far as I am con-  
18 cerned, is that although you have been freely allowed to come  
19 to this country, being a citizen of another country, you have  
20 violated our laws in a completely unacceptable way.

21           In your favor, so far as the record indicates, is  
22 that you have not been convicted before and that at least you  
23 have accepted your responsibility as to this particular crime.

24           Under the circumstances, it is adjudged that the  
25 defendant be committed to the custody of the Attorney General

2 or his authorized representative for a period of two and a  
3 half years, and upon the termination of custody shall be subject  
4 to a special parole period of three years in accordance with  
5 the provisions of Title 21, United States Code, Section 841  
6 (b)1(a).

7 Mr. Ordenez, you will be given credit under our law  
8 for the time that you have already served in jail and if you  
9 behave well in prison, which I have no reason to believe you  
10 will not, you will be given credit for what is called good time  
11 against your sentence also.

12 MR. CURLEY: I believe my client is mentioned in  
13 counts one and three also. I respectfully move to dismiss  
14 those counts as to him at this time.

15 MR. PYKETT: No objection.

16 THE COURT: With the consent of the Government, that  
17 motion is granted.

18 Go ahead.

19 MR. WARBURGH: Your Honor, the defendant stands be-  
20 fore this Court after having pleaded guilty to one count of a  
21 three-count indictment involving the possession and distribu-  
22 tion of cocaine. I had an opportunity yesterday to read the  
23 pre-sentence report, and at this time I want to point out to  
24 the Court that there are certain statements in the probation  
25 report that I would like to challenge.

1 lh

2 THE COURT: I wish you would have pointed that out  
3 to me yesterday so I could have had the probation authorities  
4 here. What is it?

5 MR. WARBURGH: The probation report indicates or  
6 describes Mr. Martinez as a person who solicited individuals to  
7 go to Venezuela to return to this country with cocaine.

8 THE COURT: Yes, it does.

9 MR. WARBURGH: This is based on the information pro-  
10 vided by an informant, I believe. Also in the probatin report  
11 there is some description of Mr. Martinez as a major supplier  
12 of cocaine and in a business involving cocaine. Those two  
13 facts I would like to challenge at this time, and I believe  
14 that the Government should be put to some sort of proof here to  
15 substantiate those allegations, because the defendant denies  
16 those allegations.

17 THE COURT: Proceed.

18 MR. WARBURGH: If those allegations don't bear,  
19 of course -- don't have any bearing on the Court's considera-  
20 tion of Mr. Martinez' sentence, then I wouldn't be challenging  
21 them. I don't know whether the Court is crediting those  
22 statements or not at this time.

23 THE COURT: I do not intend to credit them because  
24 I find that Mr. Martinez, and I don't think there is any dis-  
25 pute about this, was the moving force in the transaction, is

1 lh  
2 involved in this indictment, and I think that his sentence  
3 should be judged accordingly, without reference to the other  
4 situations referred to.

5 MR. WARBURGH: Since the Court then is not going to  
6 accredit those descriptions of Mr. Martinez and I assume is  
7 not going to use those in considering what sentence to impose  
8 upon him, at this time I don't feel then that the Government  
9 has to be put to the proof --

10 THE COURT: I understand.

11 MR. WARBURGH: Mr. Martinez as described in the  
12 report is 37 years old, and to his benefit has never been in-  
13 volved with the law before. I believe that this involvement in  
14 this transaction was an isolated one and because of the ex-  
15 cellent work of the federal agents I believe that Mr. Martinez  
16 was stopped before he could endanger the public in any other  
17 way.

18 I believe that there is a possibility that Mr.  
19 Martinez participated in this venture because of circumstances  
20 that existed at the time.

21 THE COURT: What circumstances?

22 MR. WARBURGH: Your Honor, he came from a background  
23 of poverty, he had been born in Puerto Rico, deserted by his  
24 father, taken to Venezuela by his mother who died sometime  
25 thereafter, came to this country in an unusual way in an attempt

1 lh

2 to better himself. He was smuggled here by a friend of his on  
3 a ship.

4 He doesn't deny that fact and he admits that fact.  
5 He came here to better himself, and he met a young lady by the  
6 name of Rafaella whom he lived in a commonlaw relationship with,  
7 and she became pregnant and they were evicted from their home.

8 He really had no substantial employment, and under  
9 those circumstances, after being evicted, having no substantial  
10 employment, being forced to have this young lady go to Puerto  
11 Rico to live because he couldn't provide for her, I believe  
12 that this may have caused him to become involved in this type  
13 of business because --

14 THE COURT: Because he needed money.

15 MR. WARBURGH: Admittedly it's a way to get money.

16 THE COURT: Admittedly it is.

17 MR. WARBURGH: I believe, however, that he at the  
18 time, knowing, of course, that this was wrong, was really  
19 trying to help himself and his wife to possibly live together  
20 again, although in a very --

21 THE COURT: I am sympathetic with such matters, Mr.  
22 Warburgh, and I want Mr. Martinez to know that I think it is  
23 all very easy for us to sit up here on the bench and judge  
24 people who have problems of poverty; but those problems can't  
25 be solved at the expense of other people, by inflicting on them

1 drug habits.

2 MR. WARBURGH: Mr. Martinez realizes that and I  
3 pointed that out to him myself. But he has freely admitted  
4 his guilt in this particular case, and he realizes that he  
5 must be punished for this crime.

6 In punishing him, however, he asks you not to  
7 punish him to the extent that his wife and child are punished.  
8 I realize that they are receiving public assistance, but it  
9 is his desire to, if he can, provide for them himself.

10 THE COURT: If that suggests a suspended sentence,  
11 I don't think I can possibly do that.

12 MR. WARBURGH: I am not suggesting a suspended  
13 sentence, Your Honor. I urge this court to consider him as  
14 an individual in his own individual circumstances. I believe  
15 that he has learned a lesson from this involvement and I  
16 don't think that he is ever again going to become involved  
17 in any type of criminal activity.

18 THE COURT: I certainly hope not, although you  
19 know that that is often stated in this court and in every  
20 other court and it doesn't turn out to be the fact.

21 MR. WARBURGH: That is right. I ask this court  
22 to balance society's interests with Mr. Martinez's interests,  
23 because both have a great deal at stake here.

24 THE COURT: All right.

25 MR. WARBURGH: He realizes that imprisonment here



2 is properly mandated in this particular case, but he asks  
3 the court not to punish him as a deterrence to others because  
4 I think it's been established that that is not a valid goal  
5 for --

6 THE COURT: I am not sure I think that anything  
7 has been established or that that is not a valid control,  
8 but it certainly is not controlling.

9 MR. WARBURGH: He asks the court to be as lenient  
10 as possible in this case. After he had pleaded guilty and  
11 sometime at the beginning of this year, I think January 15,  
12 he was indicted in the Eastern District of New York --

13 THE COURT: That is not very encouraging.

14 MR. WARBURGH: -- with a number of other defendants  
15 in a conspiracy case involving cocaine. I have that indict-  
16 ment here in court, and there are a number of substantive  
17 counts in which he is named that are dated after his date of  
18 arrest and confinement in this case.

19 I ask the court, of course, not to consider that  
20 against him because he is presumed innocent in that particular  
21 case.

22 THE COURT: I shall not.

23 MR. WARBURGH: Based on all the facts and based on  
24 a very thorough presentence report, I ask that the court be as  
25 lenient as possible in sentencing Mr. Martinez.

THE COURT: Thank you, Mr. Warburgh.

Mr. Martinez, you heard me tell Mr. Ardenez, and I tell you, that you have the right at this time to say anything to me that you wish to say in regard to the sentence that ought to be imposed on you. I would like to hear from you.

Is there anything you wish to tell me?

MR. MARTINEZ: Your Honor, that you consider that I have a wife and a son.

THE COURT: All right. Thank you.

Mr. Martinez, as with Mr. Ardenez, you stand here convicted on your own plea of guilty of violating our laws with regard to the control of narcotic drugs. Even though this is your first offense, the law would allow a penalty of five years in prison and a \$25,000 fine, and a three-year parole period.

As I said in the case of Mr. Ardenez, the nature of the crime here is a very serious one. We all know what the use of narcotics had done, particularly in this city, to the society, and the sad thing is that even if you committed this crime because you needed money for your family, it is the poor people of our community who are largely the victims of the traffic in narcotics. So there is that against you.

Also against you is the fact that, as with

2 mr. Ardenez, according to the presentence report, you have  
3 given no information as to the source of your narcotics so  
4 that the public can be protected from those sources.

5 Furthermore, I don't think there is any question  
6 but that you were the moving factor in the offense described  
7 in this indictment. On the other hand, you don't seem to have  
8 any prior convictions. You have admitted your responsibility  
9 in this case, and I am aware that you, like Mr. Ardenez, have  
10 a wife, and in your case a son.

11 Bearing in mind all these things against you and  
12 in your favor, and the necessity for protecting society in  
13 matters of this kind, it is adjudged that the defendant be  
14 committed to the custody of the Attorney General, or his  
15 authorized representative, for a period of three years, and  
16 upon the termination of custody shall be subject to a special  
17 parole period of three years in accordance with the provisions  
18 of Title 21 U.S. Code, Section 841(b)1(a).

19 Mr. Martinez, as I said to Mr. Ardenez, you will  
20 be given credit for the time that you have been in jail  
21 already and you will also be given credit, if you earn it,  
22 for good time at the institution to which you will be trans-  
23 ferred. If you really mean what you say about having learned  
24 your lesson, you will not be serving such a long sentence  
25 that you will not be able to return to your wife and son in

1 1h

2 the relatively near future and take your place as a good  
3 citizen in society.

4 Do you understand?

5 MR. MARTINEZ: Yes, Your Honor.

6 MR. WARBURGH: Thank you very much, Your Honor.

7 Your Honor, there are two open counts, Counts 1 and  
8 3. I would move to dismiss them at this time.

9 MR. PYKETT: I have no objection.

10 THE COURT: On the consent of the government, that  
11 motion is granted.

12 (Court Adjourned.)  
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74-2055

1 UNITED STATES DISTRICT COURT  
2 EASTERN DISTRICT OF NEW YORK

FILED  
IN CLERK'S OFFICE  
U. S. DISTRICT COURT E.D. N.Y.  
SEP 6 1974

A 42

3 -----  
4 UNITED STATES OF AMERICA,

5 Plaintiff,

6 - against -

74 CR 25

7 CARLOS MARTINEZ,

8 Defendant.

9 -----X

10 United States Courthouse  
11 Brooklyn, New York

12 May 2, 1974  
13 10:00 A.M.

14 B E F O R E :

15 JACOB MISHLER, Ch. U. S. D. J.

16  
17  
18 ( Evidentiary Hearing )

19 I hereby certify that the foregoing is  
20 a true and accurate transcript from my  
21 stenographic notes in this proceeding.

22 *Ilene Ginsberg*

23 Official Court Reporter  
U. S. District Court

24 Ilene Ginsberg  
25 Acting Official Court Reporter

63  
[Signature]

1  
2 A P P E A R A N C E S :  
3  
4

5 EDWARD J. BOYD, V., U.S. ATTORNEY

6 BY: JOHN CADEN, AUSA  
78 PAUL E. WARBURGH, JR., ESQ.  
9 Attorney for defendant  
10

11 Also present:

12 Maria Elena Cardenas,  
13 Spanish Interpreter  
14  
15  
16  
17  
18  
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1  
2 THE CLERK: U.S.A. v. Carlos Martinez.

3 THE COURT: The motion to dismiss counts  
4 two, four, six, eight, ten, twelve, fourteen,  
5 sixteen and twenty is denied.

6 I find that United States against Bozza  
7 365 F. 2d 206 at page 221, 2d Circuit 1966, the  
8 opinion by Judge Friendly clearly holds that an  
9 aider and abettor may be charged in the district  
10 in which the acts were committed as well as the  
11 district in which the substantive crime was  
12 committed.

13 I find that United States against Feldman  
14 366 F. Sup. 356 at page 360, which is a district  
15 of Hawaii case, 1973, citing United States against  
16 Lemmer at 316 F. Sup. 249, by Judge Hoffman, in  
17 the Eastern District of Virginia, 1970, is in  
18 opposite.

19 There is no question that importation is  
20 not a continuing offense and that is all those  
21 cases held; that the importation offense was  
22 committed at the place of entry into the country.

23 In United States against Lemmer the  
24 charge was a 21 U.S.C. section 176(a) charge.  
25 The importation was not in the Eastern District

1  
2 of Virginia. The defendant was just found there.

3 In United States against Feldman, the  
4 charge was the new section, 21 U.S.C. section  
5 960(a)(1). The importation was not in Hawaii  
6 but elsewhere and so the charges were dismissed  
7 for improper venue. That is not the case here  
8 and you have an exception.

9 Incidentally, United States against Bozza,  
10 of course, cites another United States Circuit  
11 case, United States against Gillette, 169 F. 2d  
12 499 page 451. There, certiorari was denied at  
13 342 U.S. 827.

14 MR. WARBURGH: We read a case from the  
15 10th Circuit this morning which held in effect  
16 that smuggling is a continuing offense.

17 THE COURT: Smuggling?

18 MR. WARBURGH: Yes.

19 THE COURT: I don't know the case you  
20 refer to.

21 MR. WARBURGH: United States against  
22 Jackson.

23 THE COURT: Section 2 of Title 18 in  
24 effect places venue in two districts. I am  
25 not talking about smuggling but aiding and



1 abetting any crime. The crime is committed in  
2 the district in which the aiding and abetting  
3 takes place. What it does give the Government  
4 is the right to also bring it in the place where  
5 the substantive crime was committed so that if,  
6 in this case -- aiding and abetting -- if the  
7 Government decides to prosecute in Florida it  
8 would be proper venue. However, the Government  
9 having decided to prosecute in the district in  
10 which the aiding and abetting was committed, to  
11 wit, the Eastern District of New York, under  
12 Common Law, it would be properly venued and it  
13 was never intended to eliminate that district  
14 from the place of prosecution. I think the  
15 emphasis was misplaced. It was misplaced to  
16 where the crime was committed, the substantive  
17 crime.

18  
19 I think we are ready to proceed with the  
20 other phase which I regard as the meat of the  
21 case.

22 MR. CADEN: Since we met yesterday I  
23 placed a phone call and as a result of that,  
24 Agent Levine is in court and also I placed a  
25 call to the United States Attorney's office of

1  
2 the Southern District and spoke with the assistant  
3 who handled the case in the Southern District,  
4 Piquette, and he indicated to me that he could  
5 be here at or about one o'clock.

6 THE COURT: All right. I'd appreciate  
7 it if he could get here at maybe two o'clock.

8 MR. CADEN: He can be here and he indi-  
9 cated to me that he would be prompt.

10 THE COURT: Wonderful.

11 MR. CADEN: At this time I will have  
12 the two reports which I previously furnished  
13 photostatic copies of, concerning this Southern  
14 District case involving Carlos Martinez, marked  
15 now as exhibits 56 and 57.

16 THE CLERK: So marked.

17 MR. CADEN: And I will call Agent Levine  
18 to testify.

19 THE COURT: I assume that both lawyers  
20 recognize that the possible link here is Mr.  
21 Ordinez. I don't know whether you tried to  
22 get him, whether he would appear or testify,  
23 but he would appear to be quite important.

24 MR. CADEN: Let me say that may or  
25 may not be so after you hear Agent Levine.

1  
2 THE COURT: I emphasize "possibly."

3 MR. WARBURGH: The other link was  
4 Mr. Rodriguez and we learned yesterday he was  
5 possibly out of the country and I would ask  
6 at this time, if the Government has any state-  
7 ments by Mr. Rodriguez against Mr. Martinez,  
8 as to the case in the Southern District --  
9 I know at times they have statements of infor-  
10 mants they use to initiate their investigations.

11 THE COURT: Do you have any such statement?

12 MR. CADEN: I am unaware of any but I  
13 will ask Agent Levine. I know there are such  
14 statements the agents keep.

15 MR. WARBURGH: I would ask the Government  
16 to produce in court, either for the Court's  
17 inspection of my inspection, also, the entire  
18 case file concerning Mr. Martinez in the Southern  
19 District.

20 THE COURT: Is there anything that you  
21 left out?

22 MR. CADEN: The only thing I can say is --  
23 I asked the agents to bring over the D.E.A.  
24 reports concerning the matter and they did. They  
25 hand carried the file and they said it was hand

1  
2 carried because there is a case that arose  
3 out of the matter involving agent misconduct  
4 and it is presently on trial and when it came  
5 over it had to have an agent come over with it  
6 because of that particular agent's misconduct.

7 I have no objection to having an agent  
8 again come over with the file and allowing an  
9 in camera inspection of the file.

10 THE COURT: Except for those reports  
11 that charge an agent with misconduct, do you  
12 have any objection to turning everything else  
13 over?

14 MR. CADEN: I understand that is all  
15 that was in the file except for the fact that  
16 I did not know there may have been a statement.  
17 I didn't ask the agent to provide me with the  
18 statement of the informant but I asked Agent  
19 Vocchicchio to go up and check the file and if  
20 there is a statement by the informant, to produce  
21 it and I think Agent Schnackenberg has the file  
22 and I will ask Agent Vocchicchio to ask Agent  
23 Schnackenberg to bring over any other D.E.A.  
24 reports concerning Carlos Martinez in this matter.

25 When I spoke to the agents the first time --

1  
2 and Agent Levine will so testify -- that he  
3 was introduced to the defendant, Carlos Martinez  
4 by the informant Abdulio Rodriguez and met with  
5 him twice, July 13 and July 16, at which time Agent  
6 Levine purchased approximately 250 grams of cocaine  
7 and after the two meetings between Agent Levine  
8 and Carlos Martinez and Hector Ordinez, the next  
9 time the agents had cause to meet with Carlos  
10 Martinez again was the day of his arrest a couple  
11 of months later, in September. They went to his  
12 apartment and arrested him and at the time of  
13 his arrest they arrested Hector Ordinez or he may  
14 have escaped --

15 MR. WARBURGH: Yes, he did.

16 MR. CADEN: That's the essence of the case  
17 against Carlos Martinez in the Southern District  
18 but I will ask Agent Vocchicchio to go through it  
19 and if there is anything in the file concerning  
20 Carlos Martinez, including statements by the  
21 informant, I will ask him to have them brought to  
22 the Court and also defense counsel.

23 MR. WARBURGH: Your Honor, I think it  
24 might be of some benefit to the Court if the  
25 case agent was produced with the file in court

1  
2 because I think he has the most knowledge  
3 concerning the case.

4 Agent Levine was simply the undercover  
5 agent making the buy.

6 THE COURT: I don't know who will know  
7 more but let's try agent Levine.

8 MR. WARBURGH: It has been my experience  
9 in these cases that initially, the undercover  
10 agent is used in that capacity, whereas the  
11 case agent has control of the case, develops  
12 the case and makes decisions.

13 THE COURT: You may be right but it  
14 has been my experience that sometimes the  
15 undercover agent knows more about the workings  
16 of the business than the case agent who just  
17 sees reports.

18 MR. WARBURGH: But he's usually there  
19 on surveillance.

20 THE COURT: Not always.

21 MR. WARBURGH: He is the one who asked  
22 Agent Levine if he would work in the undercover  
23 capacity.

24 THE COURT: Oh, I don't say don't bring  
25 in the case agent. Bring him in but let's take

1  
2 the testimony of Agent Levine.

3 MR. CADEN: The Government calls Michael  
4 Levine.

5 MICHAEL LEVINE, having first  
6 been duly sworn by the Clerk of the Court took  
7 the witness stand and testified as follows:

8 THE CLERK: State your name and spell  
9 it for the record, please.

10 THE WITNESS: Michael Levine, L-e-v-i-n-e.

11 DIRECT EXAMINATION

12 BY MR. CADEN:

13 Q Agent Levine, by whom are you employed?

14 A By the United States Justice Department, Drug  
15 Enforcement Administration.

16 Q In what capacity are you so employed?

17 A As a special agent.

18 Q How long have you been a special agent?

19 A I have been a federal agent nine years now and  
20 with the D.E.A. since its inception July 1st of last year.

21 Q Do you know the defendant here, Carlos Martinez?

22 A Yes I do.

23 Q Directing your attention now to July 13, a Friday,  
24 did you have an occasion to meet Mr. Martinez?

25 A Yes I did.

1  
2 Q Perhaps I should move back for a moment to an  
3 earlier time, at approximately three o'clock in the after-  
4 noon and ask you if you had occasion to meet an individual  
5 by the name of Abdulio Rodriguez?

6 A Yes.

7 Q Was he at that time a Government informant?

8 A He was.

9 Q Did you know him to be a Government informant  
10 at that time?

11 A I knew him to be an informant.

12 Q Tell us what if anything you and Rodriguez did  
13 at that time?

14 A We first went to a Townsend Avenue address in  
15 the Bronx where I first searched the informant prior to him  
16 entering this building.

17 Q Did you know who lived at this Townsend Avenue  
18 Bronx apartment?

19 A An individual described to me by the informant  
20 as an Italian by the name of Louie.

21 Q Did you know Louie's last name?

22 A No.

23 Q Did the informant know the last name?

24 A No.

25 Q Did you meet Louie before?



1  
2 A No.

3 The purpose of my going there was for purposes  
4 of the informant to bring Louie out of his house and bring him  
5 to me.

6 Q If he were to be brought out of the house by the  
7 informant what would you do then?

8 A I was to negotiate with Louie for a heroin  
9 contact that Louie had.

10 Q Did the informant go into the house?

11 A Yes, the informant did go into the house after  
12 I searched him.

13 Q What was the next thing that happened after the  
14 informant went into the house?

15 A He came out of the house with a package of money  
16 and got back into the car with me, telling me that Louie didn't  
17 want to come out -- didn't want to meet anybody.

18 The money was for a prior cocaine transaction  
19 in which the informant had told me he had received cocaine  
20 from an individual by the name of Carlos and had delivered  
21 it to this Louie and this was the balance of the money due  
22 for the prior cocaine transaction.

23 Q And that transaction, that prior transaction,  
24 that had been described to you by the informant, what was the  
25 role of the individual he named as Carlos in that prior

1  
2 transaction -- the seller of the cocaine?

3 A Carlos was the seller to the informant, Abdulio  
4 Rodriguez.

5 Q What was the informant's relationship with the  
6 individual identified as Louie?

7 A He would sell it at a profit to this individual  
8 Louie the Italian but the way the arrangement was described to  
9 me by Abdulio was that it was only partially a buyer-seller  
10 arrangement because Carlos was aware of Louie's existence  
11 and on many occasions fronted -- put the narcotics up without  
12 money, pending the receipt of money by Abdulio from Louie.

13 THE COURT: Was this heroin or cocaine?

14 THE WITNESS: Cocaine.

15 THE COURT: But originally, you say  
16 Rodriguez went into the apartment on a heroin  
17 purchase. Wasn't that it?

18 THE WITNESS: No. The purpose was that  
19 Louie had a heroin contact --

20 THE COURT: Oh, I see --

21 THE WITNESS: (continuing) And Abdulio  
22 was trying to introduce me to Louie so I could  
23 glean the heroin contact through Louie.

24 Louie's only contact for cocaine was  
25 through Abdulio into Carlos.

1  
2 Q What you are testifying to Agent Levine, is  
3 that when you went with the informant to Louie's home, that  
4 at that time, you had no idea of meeting Carlos that day or  
5 conducting any investigation of Carlos?

6 A Oh, no. We had prior arrangements made where  
7 we were going to meet Carlos that day for the purchase of  
8 cocaine.

9 Q Fine.  
10 Would you tell the Court what information, if  
11 any, you were aware of concerning Carlos while you were at  
12 Louie's house.

13 If you understand my question -- what you knew  
14 about Carlos Martinez?

15 A I knew there was a relationship between Abdulio  
16 Rodriguez, the informant and Carlos.

17 Q How did you know that?

18 A Abdulio told me.

19 Q What did he tell you?

20 A He said that he would obtain cocaine from Carlos  
21 Martinez which I would then deliver to Louie the Italian.

22 Q Then, as of July 13, the informant, Abdulio  
23 Rodriguez had informed you of the relationship he had to the  
24 defendant, Carlos Martinez?

25 A That is correct.

1  
2 Q And this relationship was one of a person who  
3 would purchase cocaine from Carlos or as a middle-man for  
4 Carlos?

5 A You could -- it was never really clear whether  
6 he was a middle-man because though Abdulio made a profit,  
7 Carlos quite frequently, according to Abdulio and according  
8 to what happened that day with me, would front the money,  
9 knowing of the existence of Louie.

10 Q Front the money or the drugs?

11 A No, front the drugs; put the drugs up front  
12 without receiving payment depending upon payment from Louie  
13 to Abdulio.

14 Abdulio would extract his profit and pay whatever  
15 was due to Carlos.

16 So, however -- that is the working relationship.  
17 However you want to describe it you can.

18 Q It would appear from what you say that the  
19 relationship was one of the drugs being transferred from  
20 Carlos to the informant on a consignment basis with Abdulio  
21 responsible for turning over whatever amount of money they  
22 are agreed upon -- ultimately?

23 A Yes.

24 THE COURT: As far as you know, the  
25 transfer of merchandise from Martinez to

Rodriguez was solely cocaine? No other drug?

THE WITNESS: No other drugs that I knew of, your Honor.

Q I might ask you, also, Agent Levine, if Abdulio Rodriguez had told you of or given you any information at all about an individual named Michael Torre?

A I can't recall whether he told me about Torre or where exactly I got the information but I did know at the time that there was an investigation going on with the help of Abdulio Rodriguez, into the narcotic smuggling of Michael Torre but that's about all I knew.

Q In other words, the same day, July 13, you were working on the street with Abdulio, either through Abdulio or some other information you obtained, you were aware that Abdulio was also giving the Government information concerning an individual, Michael Torre?

A I was aware of this quite a while prior to July 13. I was aware of this while I was a customs agent; that an individual was being investigated, one Michael Torre, a cocaine smuggler. However, I had not heard of Carlos until that day.

Q When you say you hadn't heard of Carlos until that day, exactly what do you mean by that?

A Well, in my mind at that time these were two



1  
2 separate investigations.

3 Q But the source of the information about Carlos  
4 and Michael Torre came from the same individual -- Abdulio?

5 A Correct.

6 Q Had Abdulio told you or had you any information  
7 other than from Abdulio as of July, that there might be a  
8 relationship in the narcotics trafficking between Michael  
9 Torre and Carlos Martinez?

10 A No.

11 Q After the --

12 A I should say that I did ask him whether they  
13 knew each other.

14 Q You asked Abdulio if Carlos Martinez knew  
15 Michael Torre?

16 A Yes I did and he said they knew each other.

17 Q Abdulio said they did?

18 A Yes.

19 Q Did Abdulio tell you anything else?

20 A Nothing else.

21 Q As of that date, on July 13, had any information  
22 been communicated to you that there might be a relationship  
23 between Michael Torre and Carlos Martinez concerning the  
24 trafficking of narcotics?

25 A Concerning the trafficking of narcotics?

1  
2 Q Yes--that they may have been involved together?

3 A Yes, I was aware they may have been involved  
4 together but I can't be specific -- I can't recall any spe-  
5 cific instance where anyone told me they were involved toge-  
6 ther and to the best of my recollection I believe that I was  
7 aware that they might be involved. That is the best of my  
8 recollection.

9 Q So you can't particularize --

10 A Right.

11 Q Drawing your attention to when Abdulio came out  
12 of the apartment -- he came out with a sum of money?

13 A Yes.

14 Q Did he come out with any narcotics?

15 A No, he did not.

16 Q How much money did Abdulio --

17 THE COURT: Miss Ginsberg, will you  
18 read the last few questions and answers, please?

19 (Record read by reporter)

20 Q Did you see the money?

21 A Yes.

22 Q Did you count the money?

23 A Yes, myself and Special Agent Schnackenberg  
24 counted the money a few blocks from Townsend Avenue and I  
25 believe there was \$4,700.00.

Q In American currency?

A Yes.

Q In cash?

A Yes, wrapped in brown paper.

Q What was the relationship of Agent Schnackenberg to this investigation?

A He was the case agent in charge of the development of the information, the controlling of the informant, etc., etc. -- all report writing.

Q What is his relationship to the informant?

A He again, was in charge of controlling the informant, debriefing the informant, all clerical matters relating to the case. The prosecution of the case was all in Agent Schnackenberg's hands as case agent.

Q Prior to this date, July 13, 1973, had you ever met Abdulio Rodriguez?

A I had seen him on several occasions.

Q Never worked with him in any criminal investigations?

A No.

Q Were you chosen to participate in this investigation because of particular skills or abilities you may have?

A I was asked to do the undercover part of this assignment because I could speak Spanish.



1  
2 Q Please tell us what occurred when you, the  
3 informant and Agent Schnackenberg met after Abdulio came out  
4 of the Bronx apartment?

5 A We then -- we counted the money and we placed  
6 the money in the trunk of the informant's car.

7 We then went downtown to I believe 109th Street  
8 and Broadway, the Ideal Restaurant --

9 Q You mean to Manhattan?

10 A Yes. We were in the Bronx and went downtown  
11 to this particular restaurant where the informant had already  
12 set up a meeting between himself and Carlos Martinez.

13 Q Had there been any arrangement at that time  
14 that you were aware of that you were to be introduced to  
15 Carlos?

16 A No, I was "sprung" on that, so to speak.

17 Q Did you pose as a person or some other individ-  
18 ual?

19 A I posed as Louie.

20 Q Louie, the person who was paying the money for  
21 the cocaine on this prior sale?

22 A That is correct.

23 Q You indicated that you went to Manhattan, 108th  
24 Street and went to a restaurant --

25 A Corner of 109th and Broadway.

1  
2 Q Who went to the restaurant?

3 A First, when we got to the corner I believe  
4 Carlos was outside on the street. I don't think we ever  
5 entered the restaurant on that occasion.

6 The informant brought Carlos over to the car  
7 and introduced Carlos to me as Louie.

8 Q The ultimate purchaser of the cocaine on a  
9 prior occasion?

10 A Yes, and he told Carlos -- we had got there  
11 late and he said the reason we were late was because me,  
12 Louie -- I took him all over town getting the money due him  
13 and he was referring to the \$4,700.00 in the trunk of the car.

14 Q And this conversation was in Spanish?

15 A Yes.

16 Q And it was between Abdulio and Carlos?

17 A Yes, it was between Abdulio and Carlos.

18 Q Now, please tell us then, what occurred after  
19 that?

20 A We then got into the car. Carlos got into the  
21 rear seat of the car with Abdulio driving and Carlos stated  
22 that he had more stuff but that it came from different people  
23 but it was the same quality, the same kind of stuff as before  
24 and he directed Abdulio to drive to I believe 183rd Street  
25 and Grand Concourse.

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Q Then you were leaving, now, Manhattan and going back into the Bronx?

A Yes.

Q Prior to leaving Manhattan and going to the Bronx had you indicated you were agreeable or willing to purchase more cocaine?

A I hadn't said anything but the informant asked him for more -- another eighth.

Q For you and he?

A Well, he asked for more -- "We'll take more."

Q And Carlos Martinez indicated that there was more available -- more cocaine available?

A Yes.

Q You all traveled, then, Carlos, Abdulio and yourself, in one automobile?

A Correct.

Q And you went up to the Bronx?

A Yes.

Q You indicated you went to West 183rd Street?

A Yes. We got to that corner and he directed us to drive down 183rd, just off the corner, I think of Aqueduct Avenue.

Q At that time were you aware of whether or not the defendant, Carlos Martinez may have lived at a location quite

1  
2 near West 183rd Street?

3 A I believe the informant told me he lives "right  
4 near here" --

5 Q Meaning Carlos?

6 A Yes, but I wasn't sure at that point where he  
7 lived.

8 Q And at that point -- had the informant ever  
9 told you that the defendant Carlos Martinez may have been  
10 living with an individual, some other person?

11 A Up to that point no, but a few minutes later  
12 when the other individual, Hector Ordinez came out with the  
13 defendant Carlos, the informant then told me that they lived  
14 together.

15 Q Let's take it from this point.

16 The car stopped at 183rd Street and after the  
17 car stopped what happened?

18 A After the car stopped he directed us -- Martinez  
19 -- told us where to stop and we did at a hill just above  
20 Aqueduct Avenue.

21 Q This is Carlos?

22 A Yes.

23 He said "Wait here" and the informer said "Do  
24 you want the money" and Carlos asked the informant "How is it  
25 wrapped" and the informant told him "It is wrapped in paper."

1  
2 The informant and Carlos then got out of the  
3 car.

4 I saw the trunk open -- I stayed in the car --  
5 then I saw Carlos leave carrying the brown wrapped money we  
6 had put in the trunk earlier that day.

7 Q And Carlos walked away?

8 A Yes, up Aqueduct Avenue.

9 Q The informant got back in the vehicle?

10 A Yes.

11 Q Is there a time then that Carlos walked out of  
12 your sight?

13 A Yes.

14 Q Approximately how much later, if you can estimate,  
15 did you see Carlos again?

16 A Approximately twenty minutes to a half hour later  
17 I saw Carlos walking with an individual, now known to me as  
18 Hector Ordinez, walking down Aqueduct Avenue toward the street  
19 we were parked on, which I think was 183rd.

20 Q Tell us what if anything you observed first,  
21 concerning Carlos Martinez and then concerning Hector Ordinez?

22 A Well, they were walking together, talking.

23 Carlos was carrying a yellow box.

24 When they got to the corner or just below where  
25 we were facing, Ordinez continued to cross the street and



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Carlos came up the block toward us.

Q They separated at the corner?

A Yes.

Q Where did Hector go?

A I believe a store across the street.

Q And Carlos?

A He came to our vehicle. He passed the box in to me and got into the back seat of the car.

Q What did you do with the box?

A I just opened it and looked inside and saw it was a glassine bag containing a white powder and I put it on the floor of the car.

Q After that what was the next thing that occurred?

A Carlos asked us to drive down the block and turn left which we did.

We went one block north on Aqueduct and he asked us to drop him on the corner which we did.

Q Was there any conversation at that time between Carlos, the informer and yourself?

A I don't recall. There might have been some but I don't specifically recall it.

Q At any time after Carlos arrived back in the automobile was there anything said about the role of Hector Ordinez in this case?

1  
2 A Nothing concerning Hector.

3 Q Did you meet, speak to or have anything to do  
4 with Hector Ordinez that day?

5 A No, not that day.

6 Q Did either Abdulio or Carlos on July 13 ever  
7 indicate what Hector Ordinez may have had to do with this  
8 transaction?

9 A I believe that Abdulio told us that they were  
10 partners on a lot of deals and that Hector lived with him  
11 and that's about all I can recall.

12 Q What happened then after you dropped Carlos off?

13 A We went directly to headquarters, 555 West 57th  
14 Street, where I think Schnackenberg or one of the other agents  
15 weighed and tested the narcotics and that is about all I had  
16 to do with the case on that day.

17 Q That was on a Friday?

18 A Correct.

19 Q Did there come a time again that you met the  
20 informant and Carlos?

21 A Yes, on, I believe -- that would be Monday,  
22 July 16. We met at the same restaurant -- Ideal Restaurant.

23 Q In Manhattan on West 108th?

24 A I think it is on the corner of 109th and  
25 Broadway.

1  
2 Q Some time in the afternoon?

3 A Yes sir.

4 Q Who came to the restaurant?

5 A My self and Abdulio came to the restaurant and  
6 when we entered the restaurant I saw Carlos Martinez, Hector  
7 Ordinez and a third guy, who I never saw before I since, seated  
8 at a table.

9 Q Had you money with you?

10 A I had \$6,600.00 that I had handed to Rodriguez  
11 just before going into the restaurant.

12 Q What was this money to be used for?

13 A To pay Carlos Martinez.

14 Q For what?

15 A For the cocaine that we had received on Friday.

16 Q Approximately how much cocaine had you purchased  
17 or picked up on Friday?

18 A On Friday we had picked up 250 grams -- approx-  
19 imately.

20 Q How much is that exactly?

21 A About a quarter of a kilo.

22 Q So then you and Hector -- excuse me -- you and  
23 the informant walked into the restaurant and the informant  
24 had the \$6,600.00?

25 A Correct.



1  
2 Q You sat down at a table and also at the table  
3 was Carlos, Hector Ordinez and who else?

4 A And an individual who I never saw before or  
5 since.

6 Q Do you know an individual by the name of Michael  
7 Torre?

8 A I know him now.

9 Q Was that fifth individual Michael Torre?

10 A No, it was not.

11 THE COURT: We will take a short recess.

12 (Recess taken)

13 M I C H A E L L E V I N E , having

14 been previously duly sworn by the Clerk of

15 the Court resumed the witness stand and further

16 testified as follows:

17 DIRECT EXAMINATION

18 BY MR. CADEN CONTINUING:

19 Q Agent Levine, I think we got to the point where  
20 you and Abdulio met Carlos, Hector and an unidentified man in  
21 a restaurant the following Monday, July 16?

22 A That is correct.

23 Q I'd like to ask a question about the 250 grams of  
24 cocaine you received the Friday before.

25 Describe the packaging of the cocaine.

1  
2 A It was in a yellow box.

3 Inside the yellow box was clear see-through  
4 cellophane or plastic and you could see it was a white powder  
5 in the plastic bag.

6 It may have been a double-wrapped bag or two  
7 bags inside one bag which I can't recall exactly but I  
8 recall seeing it in a see-through cellophane type bag, where  
9 you could determine there was powder.

10 Q You indicated there was approximately a quarter  
11 of a kilogram of cocaine?

12 A Yes.

13 Q Do you recall if it was packaged in eighths?

14 A It may have been packaged in eighths -- two  
15 eighths. I am not sure as to eighths.

16 Q Now, back to the 16th at the restaurant and the  
17 five of you were seated -- tell us please what happened?

18 A Well, they started speaking to Abdulio and then  
19 Carlos and I began talking; small talk.

20 We ordered beer and he was surprised that I  
21 could speak Spanish.

22 Q "He" is whom?

23 A Carlos was surprised.

24 Q That is the first time you spoke in Carlos'  
25 presence?



1  
2 A Yes.

3 Q So, July 13 you said nothing?

4 A I never said anything.

5 Q But on July 16 you began to speak and you spoke  
6 in Spanish?

7 A Correct.

8 Q What was the reaction to your speaking Spanish?

9 A He was surprised. He didn't think I could  
10 speak Spanish because Abdulio said I was Italian.

11 Q This is Carlos?

12 A Yes --- and, Abdulio, as I stated before, had  
13 the \$6,600.00. I'd given it to him just prior to going into  
14 the restaurant.

15 Q What happened then?

16 A Abdulio started to pass the money across me to  
17 Carlos and Carlos asked Abdulio "How much is there" and  
18 Abdulio said, in Spanish, "66."

19 Carlos was confused --

20 Q Excuse me.

21 Was this said in English or Spanish?

22 A Spanish. He just used the number 66 and Hector  
23 Ordinez said "Six thousand six hundred."

24 Q In Spanish?

25 A Yes, and he nodded his head and the money went

1  
2 from me to Carlos and Carlos asked Abdulio if he wanted any  
3 more and Abdulio told him "No, not right now. Louie" --  
4 meaning me -- "has already accumulated two kilos" and he  
5 told him he was helping me get rid of it and that was that.

6 We had some small talk and finished the beer  
7 and left and that was the last time that I saw Carlos until  
8 the day he was brought into 57th Street.

9 Q Which was the date he was arrested?

10 A Correct.

11 THE COURT: What date is that again?

12 THE WITNESS: Offhand, I can't recall.

13 I remember it was a Sunday because they called  
14 me down to speak to him. He was already arrested.

15 THE COURT: The indictment was filed in  
16 September.

17 MR. CADEN: I believe the arrest was  
18 September 18.

19 MR. WARBURGH: I believe it was the  
20 end of September or right at the beginning of  
21 October.

22 THE COURT: The indictment date is not  
23 shown on the copy you annexed to your moving  
24 papers but your affidavit says September,  
25 without date.



All right. Soon thereafter the indictment was filed.

Q Now, while you were in the restaurant on July 16, did Hector Ordinez speak in your presence?

A The only thing Hector Ordinez said -- well, we spoke, yes -- small talk, in general.

I think I spoke to Hector Ordinez about the similarity between Spanish and Italian.

THE COURT: Did Hector Ordinez plead to this indictment?

MR. CADEN: He did.

THE COURT: Did he plead to the same count?

MR. WARBURGH: I don't recall.

THE COURT: Was he sentenced?

MR. WARBURGH: He was sentenced and in fact he took a kind of Alfred plea at the time because I think Agent Levine had to make statements on the record explaining what the proof at trial would show.

THE COURT: Who represented him?

MR. WARBURGH: The Legal Aid Society. I don't remember the attorney's name.

THE COURT: Where is he confined?

1  
2 MR. WARBURGH: I don't know --  
3 probably, Lewisburg.

4 THE COURT: Well, the agent may know.

5 MR. WARBURGH: He is in Lewisburg.

6 Q Was there any discussion on July 16 as to --  
7 by any persons at the table -- as to who the source of  
8 cocaine was?

9 A Theree was no discussion concerning the source  
10 of the cocaine.

11 Q Was there any discussion at the table by anyone  
12 as to the involvement of any person who was distributing this  
13 cocaine on Friday, other than Carlos Martinez?

14 A No, there was not.

15 Q Did anybody at the table implicate themselves  
16 or Hector Ordinez or anyone else?

17 A No.

18 THE COURT: Were any tests made of the  
19 cocaine seized in an effort to determine what  
20 area of the world it came from?

21 THE WITNESS: I don't believe so.

22 Customs used to do that but I don't  
23 think they had much success with the neutron  
24 activation analysis.

25 Q You indicated that the meeting broke up with



1  
2 Carlos indicating whether or not you or Abdulio may be inter-  
3 ested in more cocaine?

4 A Correct.

5 Q Between the time this meeting occurred on July  
6 16 and the time Carlos Martinez was arrested, approximately  
7 September 18, did you or --

8 THE COURT: One more question:

9 Was Ordinez arrested at the same time  
10 Martinez was arrested?

11 THE WITNESS: To my knowledge, at the  
12 time Martinez was arrested, Ordinez escaped  
13 out of the window of the apartment that they  
14 were in.

15 THE COURT: When was he apprehended?

16 THE WITNESS: He was apprehended some  
17 time later; exactly when, I am not sure.

18 THE COURT: Can you supply the date?

19 MR. CADEN: We have the report and it  
20 is Government's exhibit 56 and I have no  
21 objection, since it has been marked.

22 THE COURT: What date does it show?

23 MR. WARBURGH: I don't think it shows  
24 when he was arrested.

25 I think he was arrested the day after

1  
2 the meeting between Mr. Torre and Mr. Rodriguez  
3 took place at the time Mr. Torre was taken into  
4 custody, concerning the ten thousand dollars  
5 that was discussed.

6 He was arrested --

7 THE COURT: That was in December, much  
8 later --

9 MR. WARBURGH: He was arrested shortly  
10 before the trial date set by Judge Lasker.

11 THE COURT: So, he was a fugitive during  
12 that period.

13 MR. WAPBURGH: He was a fugitive for about  
14 two months or so.

15 Q Between the date of July 16 when the \$6,600.00  
16 was paid from you to Carlos Martinez until the date that Carlos  
17 Martinez was arrested on September 18, 1973 did you ever meet  
18 with or speak to Carlos Martinez again?

19 A The last time that I spoke to Carlos Martinez  
20 was the date of his arrest and I never spoke to him again.

21 Q So between July 16 and his arrest on September  
22 18 you never spoke to him?

23 A Correct.

24 Q Now, was there any investigation, and by that I  
25 mean, any surveillance of Carlos Martinez's home in between



1  
2 the time that this pay-off occurred on July 16 and the arrest  
3 on September 18?

4 A None that I was aware of.

5 Q Was there any reason that you or any other agent  
6 had that you were aware of as to why the arrest of Carlos  
7 Martinez was delayed until September 18, 1973?

8 A Yes. There were several other cases being  
9 worked on using the same informant and I believe it was felt  
10 at that time that by arresting -- we felt that we had Carlos  
11 but by arresting now we would more or less burn the identify  
12 of the informant and thereby kill the other cases being  
13 worked on.

14 MR. CADEN: No other questions.

15 MR. WARBURGH: Your Honor, I have very  
16 few questions because I think Mr. Caden did  
17 the job of incorporating what I would have  
18 asked.

19 THE COURT: I can understand why you  
20 made the statement, because there is very little  
21 disclosed on the extent of the business and I  
22 quite agree.

23 CROSS EXAMINATION

24 BY MR. WARBURGH:

25 Q Agent Levine, the cocaine that you purchased in

1  
2 July, can you describe what it looked like?

3 A To the best of my recollection it was in a  
4 cellophane clear plastic type bag. You could see that it was  
5 a white powder.

6 THE COURT: What was the weight of the  
7 bag?

8 THE WITNESS: I believe a little bit  
9 over 250 grams altogether so the powder itself  
10 was close to 250 grams.

11 THE COURT: So, it was about a quarter  
12 of a kilo?

13 THE WITNESS: Yes.

14 Q You have been an agent for about nine years?

15 A Correct.

16 Q During that period of nine years have you ever  
17 seen or been able to determine that there are different types  
18 of cocaine from its appearance -- some may be rock cocaine  
19 or some may be brown?

20 A Yes; that is correct. This was pure white  
21 powder.

22 Q What other types are there?

23 A As you said, some of it becomes crystalized and  
24 you get it in varying shades from white to brown in color.

25 Q Do you know if certain types of cocaine come from



1  
2 certain parts of the world?

3 A To the best of my knowledge the majority of  
4 the cocaine that we get now is coming from Columbia and  
5 Peru.

6 Q What does that cocaine look like?

7 A That is generally in the crystal form or pure  
8 white.

9 Q So, if someone asked your opinion as to where  
10 you thought the cocaine that you purchased in July came from,  
11 what would you say?

12 A Well, also knowing that the defendant was a  
13 Columbian, a combination of everything, I would say the stuff  
14 did come from Columbia but that's a guess.

15 Q Do you know what the percentage of the cocaine  
16 was that you purchased in July?

17 A Offhand I don't recall what the percentage was.  
18 I believe it is in the laboratory report.

19 THE COURT: Can we get a concession?  
20 Was it about 90 percent pure?

21 MR. CADEN: I am sorry. I don't have  
22 that.

23 THE COURT: Will you supply it?

24 MR. CADEN: Yes, I certainly will get  
25 the information.

1  
2 Q Agent Levine, you said you were not present in  
3 September when Mr. Martinez was arrested; right?

4 A I was present after he was arrested and brought  
5 to 57th Street.

6 Q Did you know that the agent who made the arrest  
7 seized a quantity of cocaine at that time?

8 A I was told by the agents they seized another  
9 quantity of cocaine.

10 Q Did you ever see that cocaine?

11 A No, I did not.

12 Q Agent Schnackenberg is the case agent on this  
13 case?

14 A Correct.

15 Q Did you discuss the case with him in any detail?

16 A I know I must have discussed the case with him  
17 but in all honesty I can't recall particular conversations.

18 Q But Agent Schnackenberg, as the case agent, would  
19 be able to supply information concerning the background inves-  
20 tigation; how the informant was developed and things like  
21 that?

22 A Yes.

23 Q And he is the agent that would make all the  
24 decisions in the case?

25 A Subject to approval of his supervisor which was



1  
2 Group Supervisor McMullen.

3 Q What group were you in at that time?

4 A At that particular time I was in group 33 which  
5 was the same group as Schnackenberg and McMullen.

6 Q Are you in that group now?

7 A No, I am not.

8 Q Do you know --

9 MR. WARBURGH: Strike that.

10 Q Were you in that group in November?

11 A I believe I was transferred around the beginning  
12 of November.

13 Q Is group 33 the same group that developed the  
14 conspiracy case involving Michael Torre and the other defen-  
15 dants?

16 A I believe they are, yes.

17 Q And that group supervisor is Bill McMullen;  
18 correct?

19 A Correct.

20 Q And he was the group supervisor in July?

21 A Yes, and still is.

22 MR. WARBURGH: Nothing further.

23 MR. CADEN: Nothing else.

24 THE COURT: We will take a five minute  
25 recess.

1  
2 MR. CADEN: That is the only witness,  
3 your Honor, at this time.

4 THE COURT: We are waiting --

5 MR. CADEN: I did not know at this time  
6 what application -- we had a conference --

7 MR. WARBURGH: I think we can have  
8 Schnackenberg here.

9 MR. CADEN: I understand he is on annual  
10 leave today.

11 MR. WARBURGH: But not a vacation.

12 THE COURT: He is just off for the day.  
13 I see.

14 MR. CADEN: He was in my office yesterday  
15 because I had to discuss the matter with him.

16 Is there any other person other than  
17 Schnackenberg the defense would want?

18 MR. WARBURGH: I just want to look at  
19 the case file.

20 MR. CADEN: That can be done now.

21 THE COURT: Is there a chance of stipu-  
22 lating that what he put in his report he would  
23 testify to?

24 MR. WARBURGH: Well, you see, the case  
25 agent usually does not write up the report as such.



1  
2 I think the arrest is significant.

3 MR. CADEN: Let me just indicate that  
4 there were two reports I gave Mr. Warburgh;  
5 one written by Agent Levine and he has testi-  
6 fied in great detail as to everything in the  
7 July 17 report and the only other report in  
8 the file that I am aware of is the September  
9 10 report by Schnackenberg and it goes into  
10 the detail of the facts of Carlos Martinez's  
11 arrest on September 18 and it indicates in the  
12 report that the agent had come to learn that  
13 Carlos Martinez and Hector Ordinez lived at  
14 the apartment located in the Bronx, close to  
15 183rd Street that Agent Levine testified about.

16 The agents went there and as Carlos  
17 Martinez was exiting the apartment he was arrested  
18 and the arresting agent requested Martinez to go  
19 back to the apartment because they thought Hector  
20 Ordinez was there and as they got to the apartment  
21 and the door was opened Martinez said something in  
22 Spanish to Ordinez and Ordinez fled out the rear  
23 window down the fire escape.

24 When the agents gained access to the apart-  
25 ment they looked around and noticed on the roof

1  
2 of an apartment, lying adjacent to the Martinez  
3 apartment, there was a bag on the rooftop and  
4 they picked it up and there was 500 grams, in  
5 all, and that was the basis of the one count,  
6 the possession with intent to distribute by  
7 Ordinez and Martinez and that was the basis of  
8 the Southern District indictment which I do not  
9 have before me.

10 THE COURT: I have the Southern District  
11 indictment.

12 MR. CADEN: It may be count three, Judge.

13 THE COURT: Count three alleges the possession  
14 with intent to distribute approximately, I think  
15 it says 682 grams of cocaine on September 18.

16 MR. CADEN: The agents found the cocaine  
17 on the rooftop and because they knew that Hector  
18 Ordinez and Carlos Martinez, or they believed  
19 they lived together, the cocaine seized then  
20 was used as the third count.

21 THE COURT: We'll have to take Mr. Schnack-  
22 enberg's testimony at another time. I don't think  
23 I will have the time tomorrow. We usually have  
24 a heavy motions day.

25 MR. WARBURGH: I have no objection to



1  
2 having the report admitted in evidence.

3 MR. CADEN: It is 56. It has already  
4 been done.

5 THE CLERK: No, for identification.

6 Government's exhibits 56 and 57 previously  
7 marked for identification now marked in evidence.

8 (So marked)

9 MR. WARBURGH: If we get the lab report  
10 in evidence and if I talk to Mr. Schnackenberg  
11 myself, there may be no necessity to call him.

12 THE COURT: Will you call up and ask  
13 Agent Schnackenberg to talk to Mr. Warburgh?

14 MR. CADEN: Surely.

15 I might make a suggestion: We have a  
16 phone number of Agent Schnackenberg. He lives  
17 in Suffolk County and I am sure Mr. Warburgh  
18 can always come to my office and make a phone  
19 call and after the phone call, if he feels he  
20 should come in we can have a date at least,  
21 before he leaves, by conferring with you.

22 THE COURT: All right.

23 MR. WARBURGH: Possibly, we can take  
24 the testimony in the form of a stipulation.

25 THE COURT: Yes, we might get on

1  
2 extensions --

3 MR. CADEN: Yes, if Mr. Warburgh wants,  
4 I will just listen.

5 THE COURT: You may want to do that before  
6 Mr. Piquette comes in at two o'clock.

7 MR. WARBURGH: Mr. Piquette was just  
8 connected with the case at the last moment because  
9 the assistant handling it was assigned to other  
10 duties and it is with Mr. Piquette that I had a  
11 very brief discussion concerning the fact that  
12 Mr. Martinez would plead guilty to count two and  
13 the other two counts would be dismissed.

14 THE COURT: Have you had any other discussions  
15 with the assistant --

16 MR. WARBURGH: No.

17 Piquette's testimony will be about 30  
18 seconds.

19 MR. CADEN: He said his discussions with  
20 Mr. Warburgh were as brief as indicated and he  
21 said that he told him, in essence, "Pick any  
22 count in the indictment you like" and Mr.  
23 Warburgh said "I will pick count two" and then  
24 he said that he stated that the other two counts  
25 would be dismissed.

1  
2 THE COURT: Then perhaps you can stip-  
3 ulate to that.

4 MR. WARBURGH: Yes.

5 MR. CADEN: Yes. It is very unhelpful.

6 THE COURT: If that is the stipulation  
7 I will accept that in lieu of testimony.

8 MR. CADEN: It is the typical plea  
9 bargaining that exists between Government counsel  
10 and defense counsel.

11 THE COURT: So, we don't need Mr. Piquette.  
12 Of course, the defendant could have picked  
13 the conspiracy count.

14 MR. WARBURGH: I picked count two because  
15 in my opinion it was easier for Mr. Martinez to  
16 state on the record the basis for the plea, the  
17 substantive count of selling rather than the  
18 conspiracy which is more confusing to him as it  
19 is to some other people.

20 THE COURT: I think you ought to talk to  
21 Mr. Schnackenberg and then tell me what else you  
22 want done and if you find that you are satisfied  
23 that this is the case, then I will just have to  
24 look at it and I will invite briefs by the lawyers  
25 and then I will make a determination.

1  
2 MR. CADEN: I have no other suggestions  
3 as to who to call.

4 I looked at the report and I asked myself  
5 who might be able to contribute some information --

6 MR. WARBURGH: What about McMullen? The  
7 group involved in the Southern District matter  
8 was the same group as involved with Torre and  
9 McMullen may be able to provide some information  
10 because he is knowledgeable about what each  
11 member of the group is doing.

12 THE COURT: Didn't he stick his nose in  
13 the courtroom?

14 MR. CADEN: Yes, he was one of the agents,  
15 I believe, who worked closely with Tom Puccio  
16 and I might be able to -- at least when Mr.  
17 Warburgh comes to my office -- have him speak  
18 in person to Agent McMullen.

19 THE COURT: We will take a recess and  
20 when you are ready we will reconvene.

21 Incidentally, Mr. Warburgh, have you  
22 decided Mr. Martinez will not testify?

23 MR. WARBURGH: I haven't made that  
24 decision yet.

25 THE COURT: I think you should have a

1 talk with him and see what you want to do  
2 on that. It has always puzzled me and I don't  
3 make a determination on it. I have never  
4 researched it but if this was in the nature of  
5 a civil hearing and he refused to testify and  
6 he has evidence which would bear on the issue,  
7 whether an inference may be drawn, that because  
8 of his failure to testify, where his right  
9 against self-incrimination could be drawn adversely  
10 to him --

12 MR. WARBURGH: Well, your Honor, I was  
13 considering it this morning.

14 Your Honor reserved decision on the issues  
15 presented at trial.

16 Now, Mr. Martinez's testimony would  
17 necessarily inculcate himself in the case we just  
18 tried so I was kind of at a point of indecision  
19 because your Honor would hear him possibly incul-  
20 pating himself before the Court decided the  
21 issues that were presented at trial.

22 THE COURT: Yes, there is something to  
23 that.

24 Maybe what I ought to do is when it  
25 comes to decide the case, after everything is in,

1  
2 except the defendant's testimony, is decide  
3 the case before me and then give him the right  
4 to come in and give whatever testimony he wants  
5 but he may not want to do it then either because  
6 if I find him guilty there is a question of  
7 appeal.

8 MR. WARBURGH: Since it is a non-jury  
9 trial and since the Court can distinguish  
10 evidence for the non-jury trial as opposed to  
11 the evidence in the hearing, perhaps we could  
12 do it that way.

13 I realize it is difficult.

14 THE COURT: Yes.

15 Of course, you see, the relationship of  
16 the parties, to wit, the defendant to Torre  
17 and Fontanez and Juan Mesa and the relationship  
18 to Ordinez and what the financing arrangements  
19 were and where the cocaine came from -- I am  
20 pretty well convinced that it is the same  
21 cocaine --

22 MR. WARBURGH: I don't know if I should  
23 say this off or on the record.

24 THE COURT: Everything is on the record  
25 but everything leads me to believe that if what

1  
2 Torre says is so, that Martinez relied on the  
3 couriers to bring in the cocaine for him and  
4 that when it arrived, from that point on, if  
5 Martinez was in business, then this was the  
6 cocaine used and there is no reason for me to  
7 believe that he got it from any other source.  
8 I think we can start with that. I don't know  
9 that it is the end but at least it is the start.

10 If there was proof that the other conspir-  
11 acy dealt in other narcotics too, then there may  
12 be a basis because then the business would be  
13 different. However, so far, I think the product  
14 is exactly the same.

15 MR. CADEN: When Agent Levine testified  
16 and also incorporated in his report, the meetings  
17 of July 13 and 16, Government's exhibit 57, he  
18 indicated that Carlos Martinez had told the infor-  
19 mant at the time of the first meeting that the  
20 same kind of cocaine had been obtained but from  
21 different people.

22 So in other words, it may very well be  
23 that there were different sources of cocaine.

24 THE COURT: You see, in the operation,  
25 there were different people and couriers so in

1  
2 using the language that loosely it still does  
3 not convince me.

4 You see, if the source was as large as  
5 Torre says, there would be no reason for him  
6 to go to different importers.

7 There is nothing in this case indicating  
8 that he got it any differently and mind you, it  
9 was brought in different ways; false bottoms  
10 of shoes and suitcases and during the period,  
11 came to Torre's apartment. So, it seems that  
12 the source was the same.

13 What happened after Torre came in, if  
14 Torre is believed, the couriers were used but  
15 this was the same source -- Colombian cocaine.

16 The method of doing business, as I say,  
17 changed when Torre came in because Torre apparently  
18 could enlist American speaking couriers and with  
19 two and three couriers arriving at a time it was  
20 apparently adequate to bring in whatever supply  
21 they had down in Columbia available for Martinez.

22 MR. CADEN: The problem I have with the  
23 case -- I think you have analyzed the case with  
24 substantially the same view. I don't take issue  
25 with your analysis. It is certainly the fact.



1  
2 The problem I have had since we raised  
3 this issue is really trying to ascertain the  
4 existence of the conspiracy in the Southern  
5 District. \*

6 It seemed to me, what the Southern  
7 District had was a hand to hand sale of about a  
8 quater key of cocaine from Carlos Martinez to  
9 Agent Levine but when Hector Ordinez became  
10 involved -- they saw Ordinez walk down the  
11 street and depart and subsequently he was present  
12 for the money, although he said nothing and  
13 merely indicated the amount of money and well, it  
14 might have indicated knowledge that Hector Ordinez  
15 was aware of the fact that a crime occurred and  
16 that he was living with a person dealing in cocaine  
17 but I am not able to satisfy myself that there  
18 was more in the Southern District case than that  
19 Martinez was dealing in a hand to hand sale and  
20 that his room mate was aware of it.

21 THE COURT: We may have to go into the  
22 difference between a chain conspiracy and where  
23 a man like Martinez is at the hub and enters  
24 into different arrangements with different people  
25 and those are essentially distinguished theoretically

1  
2 but when it comes to practical application it  
3 is very, very difficult.

4 In other words, I can see an arrangement  
5 where Mr. Martinez would have a business arrange-  
6 ment with A and A would sell to his customer and  
7 then have a different arrangement with B and B  
8 would sell to his customer and have a different  
9 arrangement with C and so on and have ten different  
10 businesses going.

11 I cannot tell you would distinguish that  
12 theory of a number of different conspiracies  
13 from one in which you'd say this was a chain  
14 conspiracy where Martinez was the distributor;  
15 the others were the middle-men; the wholesalers  
16 and the others were the retailers -- something  
17 like that.

18 These are the thoughts going through my  
19 mind.

20 MR. WARBURGH: There has been a narcotics  
21 conspiracy case in the second circuit where they  
22 held it was a real type conspiracy. They are  
23 all found to be a chain type conspiracy.

24 In fact, I think Borelli lasted over  
25 12 years.

1  
2 THE COURT: Is that the one that is  
3 <sup>Accor</sup>  
part of Gucci?

4 MR. WARBURGH: I think it is part of it.

5 THE COURT: It seems so easy when written  
6 down.

7 There is no reason it couldn't be in a  
8 narcotics conspiracy. Very often we have them  
9 in the various fraud cases -- a fraud conspiracy.  
10 Judge Travia is dealing with it right now, where  
11 one individual apparently is alleged to have  
12 funneled false applications to the F.H.A.  
13 Now, there are other various real estate brokers  
14 that were brought in, brokers who sold houses  
15 and re-financed houses and re-sold houses and  
16 the argument there, I believe, is these are a  
17 number of conspiracies.

18 I can tell you, in a number of narcotics  
19 cases, lawyers make the argument there are  
20 different conspiracies.

21 MR. WARBURGH: I know that and each time  
22 it is rejected by the Court of Appeals.

23 THE COURT: I recall the Court of Appeals  
24 saying in one case, it really doesn't matter,  
25 it wasn't prejudicial.

1  
2 So, they didn't say that you can't have  
3 what we call a number of conspiracies in nar-  
4 cotics cases. It is a very unsatisfactory and  
5 a difficult and uncertain concept--the whole  
6 idea of conspiracy.

7 So, when we meet the every day problems  
8 they are difficult to explain. We try to  
9 analyze it to business so we say a man can be  
10 in this business or another business and then  
11 we ask, is that two separate businesses? Well,  
12 you know that in a legitimate enterprise you  
13 will have a different place of business or  
14 partners or bank account. You will have separate  
15 records and make records to the Government so you  
16 know it is different but you don't have that in an  
17 unlawful conspiracy, so what are the guides --  
18 different periods of time, different financing,  
19 different times, places -- those are some of the  
20 guides.

21 MR. CADEN: It is interesting because in  
22 a case like this I thought of the Government's  
23 proof and asked myself if anything in the Southern  
24 District would have been relevant to what I would  
25 show and I think there is an argument for the

1  
2 relevancy if I attempted to offer it but the  
3 problem is trying to conceptualize in my mind  
4 how Ordinez was involved in this particular  
5 conspiracy.

6 Suppose we didn't know about the Southern  
7 District case and suppose Agent Levine came in  
8 and said Ordinez is involved with Martinez.  
9 Would I have named the defendant Hector Ordinez  
10 who was involved in what I thought to be a  
11 hand to hand sale? I am not saying I would name  
12 him.

13 THE COURT: I was waiting for the answer  
14 because I can tell you, the way it is alleged,  
15 this sale would have been alleged.

16 So far we have been talking about the  
17 conspiracy and not the substantive count.

18 One of the reasons I asked about or  
19 perhaps you are thinking about it but didn't  
20 want to discuss it, Mr. Warburgh, is what  
21 happened after Martinez was in jail and the  
22 reason I asked about Ordinez was this: That  
23 if he was a fugitive he couldn't have been  
24 doing any business with Ordinez. So --

25 MR. WARBURGH: You will remember that

1  
2 I asked Mr. Torre at the time he was taken  
3 into custody with the money whether he had  
4 spoken to Ordinez prior to that and he said  
5 he spoke with Ordinez about the money I think  
6 a day or so before, concerning the bail money  
7 and getting it together so there is some  
8 indication that he was still involved or  
9 actively participating in some type of trans-  
10 action to get money together.

11 THE COURT: Well, we have got a substan-  
12 tive count charging Martinez with aiding and  
13 abetting a sale in December, as I recall --

14 MR. CADEN: No, up until November --  
15 the last trip, November 10 as to the arrival  
16 at Kennedy and we have a substantive count.

17 THE COURT: I'm sorry. It was after  
18 he was in jail.

19 MR. CADEN: We have three; October,  
20 November and December. He is named in the  
21 October count.

22 You see, what Michael Torre said was  
23 that the trip in December was discussed with  
24 Martinez and the trip was made as planned but  
25 when the trip was completed then he was in jail



1 and the September trip, there was indication  
2 by Fontanez that the money was Carlos' money  
3 and we knew there were other shipments;  
4 certainly, the one in November which we seized  
5 indicated that Martinez continued through  
6 Fontanez to participate in transactions that  
7 continued after he was arrested and that  
8 poses the question of whether or not that really  
9 is the same conspiracy alleged in the Southern  
10 District.  
11

12 THE COURT: No, no. I am thinking of  
13 another theory.

14 Assume the conspiracies are terminated  
15 with jailing of Martinez but that he had par -  
16 ticipated in the substantive crime by the aiding  
17 and abetting before he was arrested --

18 MR. CADEN: I see.

19 THE COURT: But then, the substantive  
20 crime actually committed was completed after he  
21 was in jail and there you have a clear case  
22 where the conspiracy has been completed and that  
23 would be the difference between the aiding and  
24 abetting and conspiracy.

25 There are few instances where you can show

1  
2 the difference but that is one.

3 MR. WARBURGH: Your Honor, the Court  
4 could find under the Pinkerton Doctrine that  
5 he could be found guilty of the substantive  
6 counts. He could be found guilty --

7 THE COURT: Oh, no. I distinguish the  
8 Pinkerton Doctrine from that because under the  
9 Pinkerton Doctrine it has to be during the time  
10 of the conspiracy and to advance it and it cannot  
11 be so if the conspiracy is terminated and the  
12 crime committed later.

13 MR. WARBURGH: I think the entire conspiracy  
14 has to terminate.

15 THE COURT: That would be the argument if  
16 the finding is that the conspiracy was there and  
17 the substantive crime was committed during the  
18 conspiracy.

19 MR. WARBURGH: The conspiracy continued  
20 until November.

21 THE COURT: That is a fact question.

22 MR. WARBURGH: I know.

23 The fact that Mr. Martinez did not partici-  
24 pate in the conspiracy by doing some overt act  
25 does not mean he cannot be charged with being a

1  
2 member of the conspiracy up until the end of  
3 the conspiracy.

4 THE COURT: Of course it could be and  
5 it could be that the conspiracy continued and  
6 he wasn't part of it.

7 MR. WARBURGH: There would have to be a  
8 withdrawal from the conspiracy and the fact that  
9 he is in jail is not a withdrawal, as a matter  
10 of law.

11 THE COURT: I agree.

12 MR. WARBURGH: There has to be some affirm-  
13 ative action on the part of the defendant to  
14 withdraw and the mere fact that he is in jail  
15 cannot be considered -- or perhaps it can here --  
16 well, perhaps I am arguing for the Government.

17 THE COURT: Well, these are some of the  
18 problems we have here. There are many we didn't  
19 think of.

20 (Recess taken)

21 MR. CADEN: Your Honor, when we left  
22 court this morning Mr. Warburgh and I met in my  
23 office, called Agent Schnackenberg and both  
24 Mr. Warburgh and I were on the telephone and  
25 Mr. Warburgh has discussed the case with him and

1  
2 a couple of minutes ago Mr. Warburgh met Agent  
3 McMullen in court and I have indicated to Mr.  
4 Warburgh that both of these agents are ready  
5 if and when he wants them.

6 MR. WARBURGH: I have had an opportunity  
7 to talk to Mr. Schnackenberg and Agent McMullen  
8 and I am satisfied that their testimony would be  
9 essentially the same as Agent Levine's who  
10 testified this morning so I seem reason to  
11 clutter the record with cumulative testimony.

12 MR. CADEN: I don't know if it is the  
13 same. I don't represent that what either agent  
14 or both would testify to may be the same.

15 MR. WARBURGH: The basis for my statement  
16 is this: Their recollection is based on what  
17 their reports show and Agent Schnackenberg said  
18 he'd have to refresh his recollection from the  
19 reports in the file and essentially, he would be  
20 reading or paraphrasing what is in the file which  
21 is essentially what Levine testified to today  
22 because I have the reports here and I assume  
23 the same thing would be true for Agent McMullen.

24 THE COURT: The reports are in evidence,  
25 of course.

1  
2 MR. CADEN: Yes, they are.

3 THE COURT: So, we are really saying that  
4 if they were called to testify they would testify  
5 substantially as the reports read.

6 MR. CADEN: That is correct.

7 MR. WARBURGH: That's right.

8 I have had the opportunity to talk to Mr.  
9 Martinez about testifying at this hearing and I  
10 am prepared to put him on the stand and he would  
11 testify to the source of the cocaine sold in the  
12 Southern District.

13 THE COURT: I would say that it is my  
14 opinion that what he says in this hearing could  
15 not be used against him unless he took the stand  
16 in any trial, on the merits and made statements  
17 inconsistent with what he said here.

18 It certainly -- not certainly -- but in  
19 my opinion, it could not be used by the Government  
20 on their direct case as admissions.

21 Now, if I have misinterpreted the law,  
22 at least his reliance on it will protect him.

23 I am not interested in his giving his  
24 version as to what happened. He won't testify  
25 to what occurred beyond his relationship with

Ordinez.

MR. WARBURGH: Yes, and I would ask the Court to limit the cross examination to what I ask on direct or we will be here for another day and he can inquire into the facts regarding the trial we just had.

THE COURT: Well, I will make that limitation but I don't know if it would be as helpful as if he testify to everything and Mr. Caden was allowed cross examination. If it is not enough and I allow further inquiry then I will allow Mr. Warburgh to submit anything he wishes.

MR. CADEN: So, Mr. Martinez will testify to his relationship as to the co-defendant in the Southern District, Mr. Ordinez, and any cross examination I have will be based on that relationship.

THE COURT: Will he be allowed to cross examine on the quantity he gave to Ordinez, the price, the way of packing, the way of financing and so forth -- everything with relation to what happened with Ordinez?

MR. WARBURGH: That's right.

THE COURT: You have to be confined to that.



1  
2 I don't know if it is going to be  
3 sufficient or not but let's try it and see.

4 MR. WARBURGH: At this time the defense  
5 calls the defendant, Carlos Martinez to the  
6 stand.

7 (The Spanish interpreter, Maria Elena  
8 Cardenas, was duly sworn by the Clerk of the  
9 Court)

10 L U I S C A R L O S M A R T I N E Z , having  
11 first been duly sworn by the Clerk of the Court  
12 took the witness stand and testified through  
13 the Spanish interpreter, as follows:

14 THE CLERK: State your name for the  
15 record.

16 THE WITNESS: Luis Carlos Martinez,  
17 M-a-r-t-i-n-e-z.

18 DIRECT EXAMINATION

19 BY MR. WARBURGH:

20 Q Mr. Martinez, would you state your name for the  
21 record, please?

22 A Luis Carlos Martinez.

23 Q Mr. Martinez are you presently serving a sen-  
24 tence imposed upon you by Judge Lasker?

25 A Yes.

1  
2 Q Was that sentence a result of pleading guilty  
3 in a case in the Southern District of New York?

4 A Yes.

5 Q With reference to that case in the Southern  
6 District of New York were you charged with a three count  
7 indictment?

8 A Yes.

9 Q And did that indictment charge you with conspir-  
10 acy together with Hector Ordinez to possess and distribute  
11 cocaine?

12 A Yes.

13 Q Did that indictment also charge you with selling--  
14 MR. WARBURGH: Strike that.

15 Q (continuing) Distributing a certain quantity of  
16 cocaine in July of 1973?

17 A Yes.

18 Q And did that indictment also charge you with,  
19 in September, 1973, possessing a certain quantity of cocaine  
20 with the intent to distribute it?

21 A Yes.

22 Q With reference to that case did you plead guilty  
23 to count two of that indictment after discussing the facts  
24 of the case with me?

25 A Yes.

1  
2 Q And count two of that indictment, to which you  
3 pled guilty, charged you with distributing a certain quantity  
4 of cocaine in July, 1973, to an undercover federal agent; is  
5 that right?

6 A Yes.

7 Q And Mr. Martinez, were you in court this morning  
8 when Special Agent Michael Levine testified?

9 A Yes.

10 Q And was that the agent to whom you gave the  
11 cocaine in July of 1973?

12 A Yes.

13 Q Mr. Martinez, you heard Agent Levine testify  
14 this morning; is that correct?

15 A Yes.

16 Q Is what he said this morning true concerning  
17 your involvement in July of 1973?

18 A Yes.

19 Q So, you did in fact give Special Agent Levine  
20 a certain quantity of cocaine in July of 1973; is that right?

21 A Yes.

22 Q Now Mr. Martinez, can you tell the Court where  
23 you got that quantity of cocaine that you gave to Special  
24 Agent Levine?

25 A That cocaine, we had on Madison with Mr. Mike.

1  
2 I had gotten together with Abdulio to deliver  
3 two eighths on the following day and when he came to bring  
4 me the money he came with that gentleman, the detective.

5 That day I went with them to Grand Concourse  
6 and to Aqueduct -- I used to live at Aqueduct -- and there I  
7 handed over two eighths. I had brought it from Madison the  
8 day before to deliver to him.

9 Q Mr. Martinez, do you know how that quantity of  
10 cocaine got to Madison Avenue?

11 A Some days prior to that Ellen and an Aunt of  
12 Mike's had arrived a few days before and brought some suit-  
13 cases that contained cocaine.

14 Most of it all was turned over to Abdulio.  
15 There were just six little packets left. Of the six I took  
16 two and therefore, there remained only four. That is where  
17 that cocaine came from.

18 Q Just to kind of clarify what your answer was,  
19 is it your testimony that the cocaine that was sold to Agent  
20 Levine was part of the cocaine that was brought into the  
21 United States by Ellen Reiner and an Aunt of Mr. Torre, by  
22 the name of Algarin?

23 A Yes.

24 Q And that cocaine that you sold or gave to Agent  
25 Levine was stored at Mr. Torre's apartment at Madison Avenue;

A 110

1  
2 is that correct?

3 A Not in the apartment -- downstairs in the  
4 basement.

5 Q But the basement was in the same building as  
6 the apartment; is that right?

7 A Yes.

8 Q And then the night before you gave the cocaine  
9 to Agent Levine you picked up that cocaine in the building on  
10 Madison Avenue and took it to your apartment; is that right?

11 A Yes.

12 Q At the time that you gave the cocaine to Agent  
13 Levine was Abdulio Rodriguez with you?

14 A He was with the agent -- no -- Abdulio was with  
15 the agent.

16 Q And on that same day that you gave the cocaine  
17 to Agent Levine was Hector Ordinez with you at any time?

18 A He was in the apartment.

19 Q How long had you known Hector Ordinez at that  
20 time?

21 A Approximately some three months.

22 Q So, you would have known him since May of 1973?

23 A April to May; yes.

24 Q And Mr. Martinez, how did you meet Mr. Ordinez?

25 A I met him in Queens in a bar. A common friend,

1  
2 a friend of his and mine, introduced us. We had a few drinks  
3 at that bar.

4 We were somewhat intoxicated and he was driving  
5 a taxi. He told me that since I was intoxicated that I should  
6 go with him to his apartment and sleep there. So, that night,  
7 I slept in his apartment.

8 Then, the following day he said to me that he  
9 lived there in that apartment by himself; that he had two  
10 bedrooms; that why didn't I remain there to live; that we  
11 could split the rent.

12 So, I accepted and some three or four days later  
13 I moved there.

14 Q So, in other words, you began to get friendly  
15 with Hector Ordinez; is that right?

16 A Yes.

17 Q Did he accompany you at times when you used to  
18 visit Mr. Torre?

19 A Yes.

20 Q Can you tell the Court approximately how many  
21 times he used to go with you when you used to visit Mr. Torre?

22 A Yes.

23 Q Can you tell the Court approximately how many  
24 times he used to go with you when you used to visit Mr. Torre?

25 A It is difficult because we went many times.



1  
2 Q Would it be fair to say that he went with you  
3 on quite a few occasions?

4 A On many.

5 Q And on some of those occasions did you go to  
6 meet with Mr. Torre for purposes of engaging in cocaine trans-  
7 actions or dealings?

8 A Yes.

9 Q And was Mr. Ordinez present when you had dis-  
10 cussions concerning cocaine?

11 A Yes.

12 Q And did he participate in any way in those  
13 cocaine dealings?

14 A He would accompany me in the deliveries and I  
15 would give him a hundred dollars, fifty dollars, two hundred  
16 dollars, depending on how much I delivered.

17 Q Did he handle the cocaine along with you in  
18 these transactions?

19 THE INTERPRETER CARDENAS: "Did he  
20 handle"?

21 MR. WARBURGH: Yes.

22 A Not directly. He knew what I was doing.

23 Q And he drove you when you had to be driven at  
24 times when you were delivering cocaine?

25 A Yes, and while I was looking for the person he

1  
2 would keep it there in the car -- keep an eye on it there in  
3 the car.

4 Q After the transaction was completed you used to  
5 give him some money; is that right?

6 A Whenever I was paid for whatever I was taking.

7 Q When you used to go to see Mr. Torre and Mr.  
8 Ordinez accompanied you, did he drive you to the meeting?

9 A Yes.

10 Q And when you left those meetings with Mr. Torre  
11 did you ever take any cocaine with you?

12 A Yes.

13 Q And did Mr. Ordinez drive you away from the  
14 meeting with Mr. Torre with the cocaine?

15 A Yes.

16 Q Now, on this occasion in July, when you gave the  
17 cocaine to Agent Levine, did Mr. Ordinez go with you the night  
18 before to pick up the cocaine?

19 A Yes, to Madison and from Madison we took it to  
20 the apartment.

21 Q And was Mr. Ordinez with you the next day at any  
22 time when you gave the cocaine to Agent Levine?

23 A He was waiting for me in the apartment.

24 Q When you gave the cocaine to Agent Levine did  
25 you get any money from him at that time for that cocaine?

1  
2 A No.

3 Q When did you get paid for that cocaine that you  
4 gave to Agent Levine?

5 A On the following day or two days later.

6 Q Where did that payment take place?

7 A At a restaurant on Broadway.

8 Q Was Hector Ordinez with you at the time that  
9 payment was made?

10 A We got there first -- Hector Ordinez -- and then  
11 they arrived later.

12 Q And then after they arrived was the payment for  
13 the cocaine made?

14 A They gave me a package with the money.

15 Q Now, this time in July when you sold the cocaine  
16 or gave the cocaine to Agent Levine, who setup the meeting  
17 between you and Agent Levine?

18 A I had an appointment with Abdulio Rodriguez,  
19 not with the agent.

20 Q Had you known Abdulio Rodriguez prior to that?

21 A Yes.

22 Q When had you first met Rodriguez?

23 A I met him toward the end -- the last month of  
24 1972.

25 Q Would you see him from time to time thereafter?

1  
2 A Yes.

3 Q And sometimes would you see him when you were  
4 with Michael Torre?

5 A Almost always we made an appointment to meet  
6 there, at the apartment of Michael Torre.

7 Q Did these meetings involve discussing cocaine?

8 A Yes, that's what they were for.

9 Q Did Rodriguez set up any other meetings at  
10 times when you gave people cocaine?

11 A Several.

12 Q And over what period of time or what year did  
13 these several meetings take place?

14 A The beginning of 1973. It was continuously.  
15 We were continuously meeting -- many times in the apartment  
16 and other times I would meet him on the street.

17 Q And this was during 1973; is that right?

18 A Yes.

19 MR. WARBURGH: I have no further  
20 questions, your Honor.

21 THE COURT: Mr. Caden?

22 CROSS EXAMINATION

23 BY MR. CADFN:

24 Q Mr. Martinez, you know who I am?

25 A Yes.

1  
2 Q What was the name of the man who introduced  
3 you to Hector Ordinez?

4 A Angelo.

5 Q Do you know Angelo's last name?

6 MR. WARBURGH: I am going to object  
7 to this question.

8 I don't think this should be a discovery  
9 proceeding whereby they should ask Mr. Martinez  
10 about information that may lead to other cocaine  
11 conspiracies.

12 THE COURT: I will allow it. He may be  
13 able to show through other parties that this  
14 was unrelated to the other conspiracies.

15 I know that this kind of cross examination  
16 is just poking in the dark at times but I think  
17 it is relevant and related to his direct testimony.

18 MR. WARBURGH: I don't want to be con-  
19 fronted with the situation Mr. Torre is con-  
20 fronted with because of certain information he  
21 gave.

22 If they develop this information and  
23 apprehend or arrest somebody there may be  
24 opportunity for that person to learn how the  
25 information was obtained and we would be

1  
2 confronted with the same situation as Mr. Torre  
3 was confronted with when he testified in this  
4 case.

5 THE COURT: I don't understand the  
6 objection.

7 MR. WARBURGH: If they develop information  
8 from him as part of the discovery proceeding and  
9 that leads to the arrest of other people and it  
10 is learned that the information initiated through  
11 him then he will be in the same danger as Mr.  
12 Torre. Mr. Torre believes his life is in  
13 danger.

14 THE COURT: Then you can find out if he  
15 has any fear of Angelo and why.

16 MR. WARBURGH: I don't know who Angelo  
17 is.

18 THE COURT: I thought you had some basis --

19 MR. WARBURGH: I think it is a substantial  
20 basis.

21 THE COURT: Ask him if he has any fear  
22 of Angelo.

23 (Interpreter speaking to witness)

24 THE WITNESS: I don't know him very,  
25 very well.



THE COURT: Does he fear him? Does  
he think Angelo will harm him?

(Interpreter speaking to witness)

THE WITNESS: I don't know.

THE COURT: I will allow you to ask  
the question.

Q I think the question was --

THE COURT: What is Angelo's last name?

THE WITNESS: I just know him as  
"Angelo."

CROSS EXAMINATION

BY MR. CADEN CONTINUING:

Q Is Angelo a Columbian?

A I met him in Venezuela.

Q When did you meet him in Venezuela?

A 1969 or '70.

Q Where in Venezuela?

A In San Cristobal.

I used to have a tailor shop and he brought some  
trousers in on several occasions so that I would sew the seams.

Q So you have known Angelo for about four years?

A Approximately.

Q During that period of four years did you ever  
ask him what his last name was?

1  
2 A I met him in Venezuela and didn't see him again  
3 until that day when I went into the bar and he was there and  
4 Hector Ordinez was there.

5 Q How long had you known Angelo while in  
6 Venezuela?

7 A The first time he came he brought the trousers.  
8 I took the measurements and I was going to fix the legs and  
9 the second time he came, he came to pick up the trousers and  
10 to pay me for the work I had done on them and then he came  
11 again, about a month later and he brought me two more trousers  
12 so I would do exactly the same kind of work on them.

13 Q So, you met Angelo then, three times while you  
14 were in Venezuela?

15 A Four times -- two times and two times.

16 Q And the next time you met Angelo was sometime  
17 in 1973?

18 A Yes.

19 Q What was the name of the bar that you met Angelo  
20 in?

21 A I don't remember the name. It is on Roosevelt  
22 Avenue somewhere near 69th Street.

23 Q Had you been in that bar before?

24 A No.

25 Q Did you go there alone?

1  
2 A Yes.

3 Q How did you get there?

4 A By subway.

5 Q Were you there to meet anyone?

6 A No.

7 Q Where did Hector live?

8 A Aqueduct.

9 Q What country did Hector come from?

10 A Columbia.

11 Q How did Angelo know Hector?

12 MR. WARBURGH: If he knows.

13 THE COURT: Of course, if he knows.

14 If he doesn't know --

15 A Because before that time they had shared that  
16 apartment and Angelo had left. That is why he then asked me  
17 to share the apartment.

18 Q How long had Hector lived in that apartment  
19 in the Bronx?

20 A I think more than a year.

21 Q Do you recall Michael Torre testifying at this  
22 trial?

23 A Yes.

24 Q Do you recall Michael Torre saying or testifying  
25 that it was he -- meaning Torre -- that obtained that

1  
2 apartment for you and Hector?

3 A That is not the apartment. That is another  
4 apartment that was taken some four blocks from there on 183rd  
5 Street.

6 Q Did Michael Torre obtain an apartment for you  
7 in the Bronx?

8 A Yes.

9 Q Was it close to where you and Hector lived?

10 A No, a little bit far away.

11 Q Was it in the Bronx?

12 A Yes.

13 Q When you lived at that apartment in the Bronx  
14 did you live there alone?

15 A Yes.

16 Q When is the first time that Hector Ordinez became  
17 involved with cocaine?

18 A About a month or 15 days after living in the  
19 apartment.

20 Q Is this the apartment that you and he shared?

21 A Yes.

22 Q Do you recall how he became involved?

23 A I commented to him that I was doing that.

24 Q When was the first time that Hector Ordinez helped  
25 you to distribute cocaine?

1  
2 A I don't remember.

3 THE COURT: Well, "Helped you" doesn't  
4 help me.

5 Did he buy it from you?

6 THE WITNESS: Hector?

7 THE COURT: Yes.

8 THE WITNESS: No, he wasn't buying from  
9 me.

10 Q What did he do?

11 THE COURT: Yes. I want to know what  
12 the relationship was.

13 A I told him that I was in that business, deliver-  
14 ing that thing; that I had business with a Puerto Rican  
15 man and that I delivered the cocaine to that man.

16 MR. CADEN: That he, what?

17 INTERPRETER CARDENAS: That he delivered  
18 the cocaine to that man.

19 A (continuing) Then, on one occasion I was  
20 going to deliver three packets and he said he would accompany  
21 me.

22 Q Who is "he"?

23 A To Abdulio Rodriguez.

24 THE COURT: Do I understand that Ordinez  
25 did nothing more than drive you to Mr. Torre or

1  
2 to Mr. Rodriguez or anywhere else you were  
3 required to go to carry on your cocaine business?

4 THE WITNESS: Yes.

5 THE COURT: He never sold to any  
6 customers? He, meaning Ordinez, never sold  
7 to any customers of his own?

8 THE WITNESS: No. He just accompanied  
9 me.

10 Q Was he doing this because he was your friend?

11 A We got along well. We met each other and we got  
12 along well and I told him about that.

13 THE COURT: I'd like to know if he  
14 got paid.

15 Did you pay him for the services he  
16 rendered to you?

17 THE WITNESS: Yes.

18 Q How many times did Hector and you -- how many  
19 times did Hector accompany you when you sold cocaine on the  
20 street?

21 A I can't tell you exactly how many times but it  
22 was several times.

23 Q More than once?

24 A Yes, of course.

25 Q More than ten times?

1  
2 A I can't tell you precisely. It was several  
3 times but I can't tell you if it was eight or ten or what.

4 Q Would Hector find the purchaser of the cocaine?

5 A No, there was just one buyer, Abdulio Rodriguez.  
6 That's all.

7 THE COURT: Incidentally, while I think  
8 of it, it may be interesting to get the trans-  
9 cript of the Grand Jury minutes. You might  
10 require an order of the District Judge of the  
11 Southern District but I assume that when the  
12 indictment says -- and it is just a mimeograph  
13 form -- naming or referring to conspirators  
14 known and unknown -- to make certai there  
15 were no other conspirators known to the Jury  
16 than Ordinez and Martinez.

17 Have you seen the Grand Jury minutes?

18 MR. WARBURGH: No, but I imagine Mr.  
19 Levine testified in the Grand Jury and he testi-  
20 fied this morning concerning a third person he  
21 could not identify.

22 THE COURT: Well, I say, that is only  
23 Mr. Levine who is trying to recall what happened  
24 but I think when we talk about the indictment  
25 and the limit of the indictment we must know



1  
2 whether the Jury actually knew any others.

3 Now, it could be that others were  
4 before the Grand Jury but not identified in  
5 the indictment. It is unlikely but I think  
6 it should be ruled out.

7 MR. WARBURGH: Well, not only -- well,  
8 you see, they only transcribed certain testimony  
9 as given and other statements are made in the  
10 Grand Jury and not taken down.

11 THE COURT: Are you sure?

12 MR. WARBURGH: Yes.

13 THE COURT: Mr. Caden, has that ever  
14 happened here?

15 MR. CADEN: That's not my understanding.

16 THE COURT: I thought that only happened  
17 in Spedunk Iowa.

18 MR. WARBURGH: It is not required --

19 THE COURT: You are right. It is not  
20 required but I am saying, as a matter of policy,  
21 it has been done.

22 I don't know of any occasion -- I have  
23 heard that sometimes an assistant says "off  
24 the record" but that is contrary to instructions,  
25 as I understand them -- that everything that

1  
2 happens in a Grand Jury is supposed to be  
3 recorded and I know that everything in the  
4 Court is.

5           You were an assistant, Mr. Warburgh.  
6 Are you telling me that there were proceedings  
7 before the Grand Jury when you presented such  
8 matters to the Grand Jury that were not recorded?  
9 "I want to take the 5th" --

10           MR. WARBURGH: No but there were at times  
11 statements made in the Grand Jury that were not  
12 reported.

13           THE COURT: Did the Grand Jury record  
14 show that some statements were made off the  
15 record?

16           MR. WARBURGH: Possibly. It depends on  
17 the case.

18           THE COURT: That surprises me.

19           I have heard some assistants tell me that  
20 at times those things occur but they always tell  
21 me that is not supposed to.

22           I don't know if it is a direction of  
23 the United States Attorney or Attorney General  
24 but I understand that the Grand Jury proceedings  
25 are similar to a trial in the manner in which the

1  
2 record is made.

3 I have read Grand Jury minutes and I am  
4 led to believe that that rule is generally  
5 observed.

6 Is it a rule of the United States Attorney --

7 MR. CADEN: Your Honor, it is my under-  
8 standing -- I have been briefed by the Deputy  
9 Chief of the Criminal Division, Mr. Ryan, and  
10 he has made it known to me that the procedure  
11 is that everything is on the record and that  
12 includes any questions that the Grand Jurors may  
13 have concerning rules of law.

14 In tax cases for example -- that is my  
15 most difficult situation -- if the Grand Jurors  
16 ask me what constitutes an offense I will take  
17 out a book and indicate what I think the answers  
18 to the questions are so I try to answer all  
19 questions and it has been on the record and that  
20 is the instruction Mr. Ryan has given to all  
21 of us.

22 THE COURT: I don't know if the Grand Jury  
23 minutes will be helpful here but if I can have  
24 them I would like them and ask Mr. Piquette to  
25 make application to Judge Lasker for the Grand

1  
2 Jury minutes because one of the claims you  
3 made in an argument, if you recall, is that it  
4 may very well be -- this indictment talks about  
5 conspirators known and unknown -- it may well  
6 be that they were talking about conspirators  
7 in the indictment in the Eastern District.

8 Unknown conspirators we can only speculate  
9 on but we can determine whether other conspirators  
10 were named and the names put before the Grand Jury  
11 and whether they are charged in this indictment  
12 and that would connect it.

13 I don't think it is a rule of inclusion  
14 but rather exclusion.

15 In other words, if the party named is  
16 before the Southern District Grand Jury then  
17 it may be significant in making the determination  
18 or supporting the determination that it is the  
19 same crime and if there is nobody named then I  
20 don't think it would be helpful one way or the  
21 other.

22 MR. WARBURGH: I referred in that regard  
23 to the indictment in this case where they mention  
24 "others, unknown to the Grand Jury" in the Grand  
25 Jury testimony I have, at least from Mr. Torre,

1  
2 there were others undescribed.

3 THE COURT: Well, I think it works  
4 both ways.

5 We are trying to find the bounds of  
6 the conspiracy in both charges.

7 Now, "unknown" conspirators for either  
8 Grand Jury may be identified through the testi-  
9 mony here though it may be unknown there.  
10 Individuals may be described --

11 MR. WARBURGH: Or vice-versa.

12 THE COURT: I say, suppose some witness  
13 said "Well, it was someone who lived with Mr.  
14 Martinez"? I may infer from everything else  
15 that indeed it was Ordinez.

16 I think I should have a look at it.

17 MR. WARBURGH: No objection to that.  
18 I just don't want the Court to assume that it  
19 is all the evidence in the case because as  
20 your Honor knows, they put forward the simplest  
21 case in the Grand Jury.

22 THE COURT: I will not assume that is  
23 all the Government had. It would surprise me  
24 if they put everything they had before the  
25 Grand Jury. I agree and that is why I say, I

1  
2 don't see how it can hurt you and it may  
3 help you. We may find surprise there.

4 I am trying to find out what the  
5 Southern District charge consisted of, really.  
6 This testimony, strangely enough, was helpful  
7 in a way I won't tell you now because we will  
8 have too much argument but when it is over  
9 I will tell you what I am troubled with or  
10 what I'd like argued but that is for when you  
11 have both rested.

12 CROSS EXAMINATION

13 BY MR. CADEN CONTINUING:

14 Q You recall telling us that you sold cocaine to  
15 Agent Levine in July?

16 A Yes.

17 Q Name all of the people who helped you sell the  
18 cocaine to Agent Levine.

19 THE COURT: If you cannot answer that  
20 question, say you cannot.

21 I don't know what that meant. It may  
22 go back to the one who delivered it in Venezuela  
23 or Columbia.

24 Q Let me ask it a different way then.

25 What was the name of the person at the table

1  
2 in the Ideal Restaurant when Agent Levine gave you the sixty-  
3 six hundred dollars?

4 A Hector Ordinez.

5 Q You and Hector; Levine and Abdulio -- was  
6 there anyone else there at that time?

7 A I don't remember.

8 Q How much cocaine did Ellen and Michael's Aunt,  
9 bring in in June?

10 A They brought approximately four kilos.

11 Q How much of that four kilos was yours?

12 A Approximately one kilo.

13 Q Who did the rest belong to?

14 A To the other people who were involved in that.

15 Q Who was that?

16 A The ones that have been named here.

17 Q Who exactly are we talking about?

18 MR. WARBURGH: Your Honor --

19 THE COURT: I would sustain objection.

20 We are trying to draw the boundary and  
21 you really cannot do it without implicating  
22 the defendant in the conspiracy charged but the  
23 purpose of the hearing is really to find out what  
24 the charge was in the Southern District.

25 I am rather interested in how he treated



1  
2 his own -- not the relationship he had with  
3 the others. I know it is difficult.

4 MR. CADEN: I understand what you are  
5 saying.

6 THE COURT: You promised Mr. Warburgh  
7 that he wouldn't be placed in a position where  
8 he'd be incriminating himself in this charge.

9 Q Did any of the cocaine belong to Hector?

10 A No.

11 Q Did any of it belong to Abdulio?

12 A Neither.

13 Q What did you do with your share of that shipment?

14 A I sold it.

15 THE COURT: You said that only had one  
16 customer -- Rodriguez; is that right?

17 THE WITNESS: That's right.

18 THE COURT: And Hector Ordinez drove  
19 you to Rodriguez?

20 THE WITNESS: Yes.

21 THE COURT: And after you sold it to  
22 Rodriguez you took it out of his taxicab and  
23 delivered it to Rodriguez; right?

24 THE WITNESS: That's right.

25 MR. WARBURGH: I don't understand the

1  
2 question.

3 Are we talking about the sale in the  
4 Southern District now?

5 THE COURT: Yes.

6 MR. WARBURGH: I don't think he testi-  
7 fied to that.

8 He testified that he picked up the  
9 cocaine the night before in the building of  
10 Torres' apartment and took it to the building  
11 where he was living with Ordinez.

12 THE COURT: I didn't make it clear.

13 I wanted to know if that was the cocaine  
14 that ultimately went to Rodriguez and that was  
15 the testimony.

16 MR. WARBURGH: Yes, but Rodriguez was  
17 there at the time.

18 THE COURT: I know but ultimately the  
19 very cocaine that he got from the shipment was  
20 turned over to Rodriguez. Right?

21 MR. WARBURGH: Well, that was the cocaine  
22 sold to Levine.

23 THE COURT: Yes.

24 MR. WARBURGH: But Rodriguez didn't keep  
25 it for any period of time.

1  
2 THE COURT: All right.

3 The deal came from Martinez. It was  
4 supposed to go from Rodriguez to Louie who was  
5 really Levine; is that right -- the sixty-  
6 six hundred dollars?

7 MR. WARBURGH: Yes.

8 THE COURT: I want to know -- this was  
9 the very same cocaine and that Ordinez really  
10 did nothing more than drive him to and from  
11 the place, to Torre's and back to the apartment --

12 MR. WARBURGH: That was the night before  
13 but Rodriguez drove the next day.

14 THE COURT: I wasn't interested in the  
15 time element.

16 I wanted to know the relationship and  
17 services rendered. I don't care whether it  
18 was delivered the next day or when the money  
19 was delivered. I want to know that this was  
20 the same cocaine that was ultimately sold to  
21 Agent Levine for sixty-six hundred dollars  
22 when Rodriguez worked out the day and Levine  
23 posed as Louie.

24 The important thing being that Ordinez  
25 did nothing more than do the driving. He didn't

1  
2 get the customers, handle the merchandise --  
3 he did the driving.

4 Do you agree that is the essence of  
5 the testimony?

6 MR. WARBURGH: Yes, but he got money too.

7 THE COURT: He took the sixty-six hundred  
8 dollars and -- he got the sixty-six hundred  
9 dollars from Louie that day --

10 MR. WARBURGH: But I am talking about  
11 that Martinez gave Ordinez money of his own to  
12 keep for his services and so on.

13 THE COURT: You are talking about payment  
14 for the services.

15 MR. WARBURGH: Yes.

16 THE COURT: Yes. I am not clear on how  
17 much it was but I know he paid him for driving.

18 I am interested in knowing the relationship  
19 between Ordinez and Martinez.

20 MR. WARBURGH: I think your Honor is  
21 developing almost the same facts in the case  
22 that were considered by the Court of Appeals  
23 in U.S. V. Miguel Carmone.

24 THE COURT: I didn't have that in mind.  
25 I just want to know if these were services separate

1  
2 and apart, really, from the central services  
3 of the conspiracy.

4 CROSS EXAMINATION

5 BY MR. CADEN CONTINUING:

6 Q You indicated that one kilo of the cocaine that  
7 was brought back by Ellen and Michael's Aunt, was for you;  
8 is that correct?

9 A Yes -- approximately a kilo.

10 Q And to whom did you sell that one kilo?

11 A To Abdulio.

12 Q The whole kilo?

13 A In parts, two eighths at a time.

14 Q Where was your kilo kept?

15 A In the basement together with Mike's.

16 Q Where is the basement, exactly?

17 A 94th Street and Madison Avenue.

18 Q Is this the basement of the apartment in which  
19 Mr. Torre lives?

20 A He was like a super there and everything in the  
21 building that was left over is put into a room there and he  
22 had the keys and I had the key.

23 THE COURT: Storage room?

24 THE WITNESS: Yes. It has an entrance  
25 from the street and also an entrance from the

A 137

1  
2 building.

3 Q Do you recall telling Mr. Warburgh earlier today  
4 that you went with Hector to pick up two eighths to sell to  
5 Agent Levine?

6 A Yes.

7 Q And you went to the basement in Torre's apart-  
8 ment?

9 A Yes.

10 Q How much cocaine was in the basement at that  
11 time?

12 A If my memory doesn't fail me, there was six  
13 or seven packets.

14 Q How much cocaine is in a packet?

15 A One eighth; 125 grams.

16 Q So, there was close to a kilo of cocaine there?

17 A A kilo is eight packets.

18 Q So, there was six or seven packets there?

19 A Five or six.

20 Q How many of those packets were yours?

21 A I was taking two of them and one would stay.  
22 I had three.

23 Q Was Michael there at the time -- Michael Torre?

24 A In the basement, no -- upstairs in the apart-  
25 ment.

1  
2 Q Are you sure that Michael Torre was in the  
3 basement -- excuse me -- are you sure that Michael Torre  
4 was upstairs at that time?

5 A Yes, he was at home.

6 Q Are you quite sure of that?

7 A Yes, because the man that went with me remained  
8 in the livingroom with Mike waiting for me.

9 Q I didn't hear that.

10 A Because the man who went with me remained with  
11 Mike in the livingroom waiting for me.

12 Q Who was the man that went with --

13 A Hector Ordinez.

14 Q So, while you went to the basement to get the  
15 cocaine Hector went to see Mike?

16 MR. WARBURGH: I don't think that is  
17 the testimony.

18 THE COURT: Sustained as to form.

19 Went to see him might imply that he went  
20 to do business with him.

21 MR. CADEN: Hector?

22 THE COURT: Ordinez. He was there and  
23 the inference I make is that he was waiting  
24 while the defendant picked up the cocaine.

25 Q Did you see Michael Torre that day you picked



1  
2 the cocaine up?

3 A The day I picked up the two packets?

4 Q Yes.

5 A Yes.

6 Q Do you recall what you talked about that day?

7 A No.

8 Q Did Michael Torre know whom you were selling  
9 your cocaine to?

10 A Yes.

11 Q Did he know you were selling your cocaine to  
12 Abdulio?

13 A Yes.

14 Q Did he know Abdulio was your only customer?

15 A Yes.

16 MR. CADEN: I don't think I have any  
17 other questions, Judge.

18 THE COURT: Anything further?

19 MR. WARBURGH: No, your Honor.

20 THE COURT: You may step down.

21 Thank you.

22 Is that it?

23 MR. WARBURGH: That's it.

24 THE COURT: Both sides rest?

25 MR. CADEN: Yes.

1  
2 MR. WARBURGH: Yes.

3 THE COURT: You have no objection to  
4 the transcript of the Southern District Grand  
5 Jury proceedings being marked when they come  
6 in, if they come in.

7 Just my reaction and not necessarily  
8 my determination: I think the lawyers are  
9 entitled to know what I am thinking of so  
10 that when they argue it in any memorandum  
11 they know at least what I think the problems  
12 are.

13 In addition to everything else I dis-  
14 cussed as being a problem, in trying to determine  
15 whether the Southern District conspiracy was  
16 really the same as the other, I concerned with  
17 Ordinez's relationship to the defendant Martinez  
18 to determine whether his services were really  
19 part of the services of the Eastern District  
20 conspiracy.

21 Now, as I say, it is difficult to fix  
22 various guides. I will try to crystalize the  
23 various factors which I think would show identity  
24 and distinguish the conspiracy.

25 As I see the conspiracy at the present

1  
2 time in this district, each one of the partici-  
3 pants went into a joint venture or business,  
4 limited partnership, in which they invested  
5 X dollars and then sent the money down to  
6 Columbia.

7         Torre put money in and he employed the  
8 couriers. On his testimony here and the defen-  
9 dant, Saul Fontanez as to what was coming in,  
10 up to one part -- the part that they paid for --  
11 it is what we call fungible goods so they were  
12 not segregated and each one said "This is mine"  
13 but when they came in it was somewhat segregated  
14 and I think Fontanez took his but between Martinez  
15 and Torre they seemed to still have some interest  
16 in whatever their parts were and Martinez then  
17 sold his to Rodriguez.

18         Now, that would seem to show that Rodrigue  
19 was part of what we might call a chain conspiracy  
20 because he was either a wholesaler or retailer  
21 but he was further down in the level of activity.

22         Now, Ordinez was an aid to Martinez, pri-  
23 marily. It is true that he furthred the objectives  
24 of this conspiracy in that he brought Martinez  
25 down to Torre and picked up packages and got rid

1  
2 of the cocaine that came in but it may very well  
3 be that even though the conspiracy -- as most  
4 conspiracies alleged are indefinite as to how  
5 far the distribution goes -- it may be that this  
6 conspiracy went to the point where it delivered  
7 the cocaine to the various participants who  
8 then went out on their own and from there on  
9 they were separate conspiracies and that the  
10 conspiracy alleged here included the importation  
11 and the distribution to Fontanez, on the one  
12 hand and Martinez and Torre on the other and  
13 whoever the other participants were.

14 Now, that is one theory upon which  
15 criminal liability can be imposed in this case  
16 which would be consistent with a finding that  
17 the Southern District was not -- the Southern  
18 District charge -- was not the same because then,  
19 from there on, a new conspiracy was entered into  
20 between Martinez, Torre and Ordinez in which  
21 Martinez now became the distributor to Rodriguez  
22 as sole purchaser. Torre shared in the proceeds  
23 and helped finance it and his cocaine was used  
24 and Ordinez was the driver. I don't say they  
25 are findings but they are possibilities.

1  
2 Of course, the other obviously, is to  
3 find that it was a single conspiracy and the  
4 importation contemplated a sale of all the  
5 cocaine, right down to the users in the street  
6 and that the success of the conspiracy very well  
7 depended on the sale right to the users, the  
8 ultimate purchasers.

9 Of course, I am willing to listen to  
10 argument or maybe it is better to put in memo-  
11 randums or briefs after you receive the trans-  
12 cript.

13 MR. WARBURGH: Let me just address myself  
14 to the single conspiracy issue.

15 I think to that point, the defendant's  
16 position is the position usually advanced by the  
17 Government in all the narcotic conspiracy cases,  
18 at least in this district, because the defense  
19 attorney seeks to show on appeal that it was a  
20 multiple conspiracy and seeks to have the indict-  
21 ment dismissed on those grounds and from the  
22 cases I read, and Gucci and Borelli, the Court  
23 seems to reject those arguments by saying that  
24 co-conspirators don't have to know each other  
25 but merely the existence of others and people at

1  
2 the top, dealing in large quantities are given  
3 to know that there are other people involved  
4 because it is reasonable to assume that it is  
5 going to be broken down and mixed and so forth  
6 and spread out to the ultimate person who will  
7 be the purchaser and they hold everyone in that  
8 chain as co-conspirators and it is a single  
9 continuing conspiracy.

10 THE COURT: You must be careful because  
11 those arguments are argued to sustain the con-  
12 spiracy found. So, don't be too sure that the  
13 argument may not differ when it comes to sus-  
14 tain another type of conspiracy.

15 In other words, the Court never said  
16 that you could not have a conspiracy just to  
17 import and distribute to the wholesalers and  
18 then a totally different conspiracy that would  
19 sell it from the distributor down to the whole-  
20 saler and then analogizing, suppose this was  
21 an import house, importing sardines and groceries  
22 and canned fishes, and you had five partners, who  
23 imported tons of various canned fishes and then  
24 each one took his share and shared the expense  
25 of importing and then two of these fellows decided

1  
2 that they would have their own distribution  
3 down to a wholesaler and that would be a separate  
4 business and separate books --

5 MR. WARBURGH: Of course.

6 THE COURT: Well, you see the relation-  
7 ship between Martinez and Torre was quite different  
8 than the others.

9 MR. WARBURGH: But the relationship does  
10 not have to be the same. Each has his own part,  
11 some bigger.

12 THE COURT: I don't say the activity must  
13 be the same in a partnership but that is a way  
14 of looking at it and the other way to look at it  
15 is that others in the group, adding Ordinez, who  
16 wasn't rented to all partners to drive, pick up  
17 and deliver -- he was Mr. Martinez's private  
18 chauffeur for this business -- if Ordinez did  
19 the same work for all, the argument would probably  
20 have to fall or at least it would be a significant  
21 factor.

22 MR. WARBURGH: But it doesn't have to.

23 THE COURT: There is no single factor  
24 that would make the determination. I agree with  
25 you. I am just telling you the probability in this.



1  
2 MR. WARBURGH: There is a case that  
3 I argued, Carmona and he accompanied, on one  
4 occasion, when he delivered cocaine to an  
5 undercover agent and the Court of Appeals  
6 affirmed from the bench.

7 THE COURT: They are affirming the fact  
8 finding that he was a member of the conspiracy.

9 MR. WARBURGH: It was a general verdict.

10 THE COURT: I know, but if you gave me  
11 a case where they reversed as to him, that is  
12 significant.

13 MR. WARBURGH: I urge that.

14 THE COURT: You know, interpreting de-  
15 cisions is probably the most difficult task we  
16 lawyers have. That is my problem -- understanding  
17 an affirmance or reversal.

18 MR. WARBURGH: I argued that a single  
19 act does not make one part of the conspiracy  
20 and they rejected that--

21 THE COURT: As indicating knowledge that  
22 someone is in the conspiracy.

23 MR. WARBURGH: He never knew any of  
24 the other people in the conspiracy and was  
25 never seen from or heard from again.

1  
2 THE COURT: It is the premise commonly  
3 accepted that you have to know everyone. They  
4 are talking about a chain conspiracy bringing  
5 everyone in from the fellow growing it in  
6 Turkey or Columbia, whether heroin or cocaine,  
7 right down to the one who sells it and the  
8 user.

9 The Government could have specified that  
10 the purpose of this conspiracy was to import and  
11 for the importers to sell to distributors and  
12 the conspiracy is alleged to have gone no further.  
13 I don't think anybody could have complained that  
14 on proving just that they would have proved a  
15 conspiracy.

16 Now, of course, it is alleged in general  
17 terms, that the purpose of the conspiracy was to  
18 possess with intent to distribute and that could  
19 mean distribution down to the user on various  
20 levels. But, is it necessarily so?

21 MR. WARBURGH: We don't know. How will  
22 you ever know?

23 THE COURT: I say, one of the ways I can  
24 make a determination is to find that after it  
25 arrived here it was then treated differently --

1  
2 each one took their own and so that portion  
3 of the conspiracy ends and it may well have  
4 been a separate conspiracy. What they did with  
5 it after that was something else. Maybe one  
6 of the co-conspirators, at that point, took it  
7 home, cut it, weighed it and went out to sell it  
8 to users. You may say he was still part of the  
9 conspiracy and on the other hand I wonder if it  
10 would be inconsistent to find that that was the  
11 conspiracy.

12 Suppose a conspiracy was just to import  
13 it? Could they have just proved the importation  
14 and then proved another conspiracy to sell?

15 MR. WARBURGH: I don't think so.

16 THE COURT: You think there can be just  
17 one conspiracy from the time it is grown up until  
18 sold to the user?

19 MR. WARBURGH: Yes. You cannot break  
20 up a transaction into different parts.

21 THE COURT: I can't buy that.

22 You are following the cocaine and saying  
23 "Anybody touches it, they are a member of the  
24 same conspiracy."

25 MR. WARBURGH: If this was tried to the

1  
2 jury and I tried to assert there were two  
3 conspiracies here and I asked the Court to  
4 charge that one conspiracy stopped when they  
5 came into the country and a new one began when  
6 it came into the country, would you have charged  
7 on separate conspiracies?

8 THE COURT: No, I would not have because  
9 that is the theory the Government came to me on  
10 there but here it is not the Government's theory.

11 MR. WARBURGH: I brought a motion in the  
12 Southern District showing it was one conspiracy  
13 and now they are trying to show two separate  
14 conspiracies.

15 THE COURT: Perhaps we are talking about  
16 something very basic in presenting a case. Maybe  
17 we are asking whether the Government has the right  
18 to go to a jury on the theory of conspiracy that  
19 involved a defendant on trial and say "This is  
20 the theory upon which I am going to the jury;  
21 that this conspiracy, that this business existed  
22 only of importing the cocaine and distributing it  
23 to the importers themselves and no further and  
24 that was the business and that was the complete  
25 business. That was this conspiracy and nothing

1  
2 else and if the evidence supports that theory  
3 then you must find them guilty" and that leaves  
4 the Government free, if it wishes, to then  
5 prosecute on other conspiracies that might be  
6 supported by the evidence.

7 MR. WARBURGH: The same evidence and  
8 that is what Judge Brendan was talking about --

9 THE COURT: No, I don't know that it is  
10 the same, because the evidence there was just  
11 to the point where they distributed it, leaving  
12 the Government free to say -- they took it --  
13 leaving the Government free to say "Everything  
14 after is a separate conspiracy."

15 Now, I have not had occasion to be pre-  
16 sented with this particular question but when  
17 you are presented with it you are presented  
18 with the basic concept of what we are dealing  
19 with and we are talking about -- conspiracy.

20 I have used the term maybe 500 times or a thousand  
21 times and in general language, it is fine, but  
22 when you put it under the magnifying glass you  
23 may think of it differently. What kind of bus-  
24 iness do we mean? You argue that -- you are  
25 really saying -- once you talk about narcotics --

1  
2 everybody who deals, right down to the user  
3 is a member of the conspiracy and the basis of  
4 that is the cocaine or the drug that connects  
5 everybody.

6 MR. WARBURGH: And their activity --  
7 what they infer from their activity.

8 THE COURT: Only with relation to the  
9 drugs because it may do a lot of other things but  
10 you say it doesn't matter. It is still part of  
11 the conspiracy.

12 How much time do you want after you get  
13 the transcript?

14 MR. WARBURGH: Well, anything the Court  
15 says. It doesn't make a difference to me.

16 THE COURT: Well, if you start working  
17 on it -- you have an idea. You just have to  
18 use the transcript for the fact finding --

19 MR. WARBURGH: Right --

20 THE COURT: (continuing) But you can  
21 start working.

22 I imagine you have other cases but at  
23 least start doing some of it and try to have  
24 it in ten days from the time you get your  
25 transcript and if you need more time call me

1  
2 and tell me that but I'd like to get to this  
3 as soon after the trial ends as possible  
4 because a lot of matters, impressions remain  
5 in my mind. That is why I do so much talking,  
6 so I may recall how I felt during the trial.

7 I know there is no hurry on it but I  
8 would like to get it decided. This is a  
9 criminal matter and I would like to give you  
10 the opportunity to go up on either side and after  
11 you exchange memorandum, if either went to answer,  
12 I don't put time limits on those things. If you  
13 find something that you think would be helpful,  
14 why should I deny myself the help, so if you  
15 have it, give it to me but try to make it ten  
16 days after you get your transcript.

17 I wish this was the only interesting case  
18 I had.

19 Thank you.  
20  
21

22 \* \* \* \* \*



. I N D E X .

WITNESS	DIRECT	CROSS
LEVINE	11	37
MARTINEZ	65	74

. E X H I B I T S .

<u>GOVERNMENT</u>	<u>Description</u>	<u>Identification</u>	<u>Evidence</u>
#56	report	6	45
#57	report	6	45

PAGE 1 OF 2

IDENTIFIER

7-4-52

CL-73-0277 (Cp. 22)

## PROGRAM

DA-4-C-3

#### RELATED FILES

OTHER OFFICERS

G/S William P. McFullan  
S/A William Schmuckenberg  
S/A Jay J. Silvestro  
S/A Raymond Dripp  
S/A Henry Klein

 $C_{22}^A$ FILE  
[ ]

100

6. *Conclusions*

1

L

☐

Michael Levine  
Special Agent  
New York, New York  
July 17, 1973

Case 1:  $\mu = 0$

Recover Purchase of Exhibit #1 at West 183rd Street and Amhurst Avenue, Bronx, N.Y.

**CONCLUSIONS**

On Friday, July 13, 1973 Special Agent Michael Levine received Exhibit #1, 127 grams of cocaine from John DOE & CARLOS on consignment. This cocaine was sold for on July 16, 1973 for the sum of \$6,600 Official Advance Notice.

*(continued)*

At approximately 3:00 P.M. Special Agent Michael Levine accompanied SA 104-1666 to 1833 Townsend Avenue, Bronx, New York. The SCI entered the vehicle and was searched with negative results by Special Agent Levine. About 10 or 15 minutes later a package containing United States money. The SCI and Special Agent Levine then proceeded to a nearby location where they met Special Agent William J. Schuchman, who then advised the SCI that he was to be in the amount of \$4,000. The money was then placed in the SCI's vehicle. As approximately 4:00 P.M. the SCI and Special Agent Levine went with CARLOS to the corner of 143rd Street and Broadway, where CARLOS entered the SCI's vehicle. The SCI then introduced Special Agent Levine to CARLOS as LOUIS. The SCI explained to CARLOS in Spanish that the delay for the money was that LOUIS (Special Agent Levine) had to go to work in order to obtain the money. CARLOS then told the SCI what he had in the kind of cocaine but that he had obtained it from different people. The SCI then told him he had it and CARLOS requested them to drive to University Heights, 143rd Street, Bronx, New York. Upon arrival at this location CARLOS directed the SCI to continue down 143rd Street and to stop at the corner of 143rd Avenue. Upon arrival at this location the SCI advised CARLOS that he wanted to take the money now. CARLOS asked where it was and the SCI told him it was "in the trunk". CARLOS asked how the money was wrapped and the SCI told him that it was wrapped in paper. The SCI and CARLOS then entered the vehicle and went to the rear of the car and opened the trunk. Special Agent Levine also

SIGNATURE (PRINT)

APPROVED

1. Hamilton, Group 30, 31

7-27-73 8-02-73

Street of Narcotics and Dangerous Drugs  
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11. If not the same, by what means did the agency to which referred

DATE \_\_\_\_\_

July 27, 1973

PAGE 2 OF 3

JOHN DON O CARLOS

IDENTIFIER  
00A-C3

FILE NUMBER  
61-73-9277

PROGRAM CO

Observed CARLOS leaving and carrying the paper wrapped package containing the \$4,700. As he was leaving CARLOS told the SOI to wait there.

At approximately 5:00 P.M. Special Agent Lavigne observed GARCOS walking past the SOI's vehicle along Aqueduct Avenue carrying a yellow colored bag in his left hand. He was walking with a man whom SOI identified as Hector GARCIA. They reached the corner of Aqueduct Avenue and West 133rd Street GARCIA left GARCOS, entered a store on the corner and GARCOS continued on toward SOI's vehicle. When GARCOS entered the SOI's vehicle he invited Special Agent Lavigne into the vehicle. He then directed the SOI to drive north on Aqueduct Avenue to the corner of Evelyn Avenue where he exited the vehicle. On route to that point Special Agent Lavigne examined the contents of the bag and saw that it contained a paper bag inside of which was a quantity of white powder contained in small clear type bags.

The FBI and Special Agent Irvine continued to the corner of Street Avenue and 14th Avenue where they were joined by Special Agent Jay Silverman. All three individuals continued to Bldg. 2, Room 2, 505 West 37th Street, New York City, where the evidence was then field tested by Special Agent Silverman which resulted in positive results for cocaine.

On Friday, July 14, 1973 at approximately 3:40 P.M. the SOI and S/A [redacted] and [redacted] went to the restaurant located at the southeast corner of West 163rd Street and Avenue M, New York. S/A [redacted] and [redacted] were CARLOS and RICHARD [redacted] and [redacted] [redacted] [redacted]. CARLOS and S/A Levine exchanged greetings in Spanish. CARLOS expressed surprise at S/A Levine's ability to speak Spanish and said "I didn't think you could speak a word of Spanish". He then asked S/A Levine if Special Agent Levine and a SOI wanted to take some more, and S/A Levine said that he didn't because LEONEL (identifying S/A Levine) now had 211 grams. S/A Levine then said that he was trying to get rid of and that he (SOI) was helping him. The SOI then took a bill of 1000 containing \$6,000 (identifying S/A Levine) and said that it was by S/A Levine prior to entering the restaurant and asked if he (SOI) could keep it for the 250 grams of cocaine received on 7-13-73. CARLOS said "What is that?" The SOI said in Spanish "CC". CARLOS did not say anything but that it meant \$6,000 although he also GREGORIEZ stated \$6,000. Approximately 10 minutes later the SOI and S/A Levine left the premises and S/A William Schneiderberg and C/S William Mahulan at a pre-arranged location as the preceding events were reported verbally.

#### INTERVIEW AND OBSERVATION INSTRUMENTS:

Exhibit #1, 250 pages of documents received by Special Agent Taylor on 10-1-73 from John DOE @ CHAGO on cover sheet. Exhibit #1 was contained in a brown paper bag; further contained in a brown paper bag inside of which was two white paper bags containing the evidence. Exhibit #1 was turned over to

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INVESTIGATION

DATE

(Continuation)

July 17, 1973

PAGE 3 OF 3

FILE NUMBER

C1-72-0277

Mr. BOE &amp; CARLOS

IDENTIFIER

BA-03

PROGRAM CODE

4-03

Special Agent Tripp who field tested (with positive results for cocaine), and placed the evidence (250 grams). Special Agent Tripp then placed the exhibit in a sealed envelope, initialed by S/A's Levine and Tripp and then placed it in the DEA Regional vault for safekeeping on July 15, 1973. On July 16, 1973 Special Agent Levine and Special Agent Tripp removed Exhibit #1 from the vault and hand carried it to the DEA Chief, 90 Church Street, New York, New York.

#### PHYSICAL DESCRIPTIONS:

John BOE & CARLOS is a white Latin male, approximately 40 years of age, 5'6", 155 pounds, slim build, long black hair, brown eyes, wears glasses and a mustache. Alleged to have bullet wound scars on the right side of his head and right bicep. At the time of both meetings, CARLOS was wearing a long-sleeved printed shirt and tan slacks.

John GAYONE is a white male, approximately 35 years of age, 6'1" tall, 180 pounds, thick black wavy hair, reddish skin and alleged to speak no English. At the time of the meeting GAYONE was wearing dark colored slacks and a dark colored long-sleeved shirt with a vest.

John BOE - Unidentified Latin male, approximately 40 years of age, 5'6", 140 pounds, straight black hair and a mustache. At the time of the meeting he was wearing a light tan long-sleeved shirt.

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FD-302 (REV. 7-73)

## REPORT OF INVESTIGATION

PAGE 1 OF 3

SUBJECT: CARLOS

IDENTIFIER

DM-03

FILE NUMBER

01-73-0277 (S, 33)

PROGRAM CODE

DM-03

☐ CLOSED  
☐ REQUESTED ACTION COMPLETED  
☐ REQUESTED

## OTHER OFFICERS

S/A William C. Irwin  
 S/A Donald Ferrazone  
 S/A Michael W. Kane  
 S/A Raymond W. Tripp

CROSS

FILE

☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

William H. Schnakenberg  
 Special Agent  
 New York  
 September 20, 1973

Report of Luis Carlos MARTINEZ and Seizure of Exhibits 2a, 2b, 2c, (known as 2a, 2b, 2c, and 2d), and Exhibits A, B, and C on September 18, 1973.

## SUMMARY:

On the evening of September 18, 1973 attempts were made thru the undercover work of Special Agent to develop this investigation with the purchase of additional quantities of the defendants. It was expected that the defendants would be contacted for this final delivery. For this reason arrest warrants were not obtained at that time. On September 18, 1973 at New York City, New York, Special Agent was located and arrested defendant Luis Carlos MARTINEZ and seized Exhibits 2a, 2b, 2c, A, B, and C, approximately 602 grams of cocaine.

## DETAILS:

On September 17, 1973, OSI-C-015, related to this office that defendant Oscar ORDONEZ was currently residing at 23-20 Aqueduct Avenue, Apartment 6B, New York, New York. It was further learned that defendant Luis MARTINEZ was currently residing with ORDONEZ. Special Agent Michael Levine held periodic surveillance of the known haunts of the defendants in the hopes of furthering this investigation.

On September 18, 1973, Special Agents Schnakenberg, Kane and Tripp infiltrated the residence at 23-20 Aqueduct Avenue, New York, New York at approximately 11:00 A.M. The agents were joined by Special Agents Ferrazone and Ferrazone at approximately 1:00 P.M. at that location. Since further attempts to develop this investigation had failed, it was decided to arrest the defendants on sight.

At approximately 3:30 P.M., the OSI agent, Luis Carlos MARTINEZ, was observed to enter the front door of 23-20 Aqueduct Avenue. At this time he was placed under arrest by Special Agents Kane, Schnakenberg and Ferrazone. These agents, together with the defendant and Special Agents Tripp and Kane returned to 23-20 Aqueduct Avenue, Apartment 6B to effect the arrest of defendant Oscar ORDONEZ. At this time defendant MARTINEZ unlocked the front door to allow entry. The door was

SIGNATURE (NAME)

William H. Schnakenberg, Special Agent

APPROVED (NAME AND TITLE)

Michael W. Kane, Special Agent

Raymond W. Tripp, Special Agent

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Department of Justice

DATE

10/1/73

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## BUREAU OF INVESTIGATION

DATE

(Continuation)

September 26, 1973

PAGE 2 OF 3

TITLE

IDENTIFIER

FILE NUMBER

DA-63

61-73-9277 (G-23)

PROGRAM CODE

(REV)

John DOE &amp; CARLOS

apartment with an inside chain lock. Defendant MURKIN spoke a few words in Spanish at which time a flurry of activity was heard from within, along with the sound of a door opening. It was later found that Hector ORTIZ fled out the rear window of the apartment. Special Agent Kirtin then forced the door chain and the agents immediately searched the apartment for defendant ORTIZ with negative results.

4. At this time, Special Agent Schindler, from the rear window of the apartment, observed a shoe box, contained in a plastic bag, lying on the roof of the adjacent building just below the defendant's window. Special Agents Schindler and Kirtin retrieved the aforementioned shoe box and found it to contain Exhibits 2a, 2b, 2c, and C. (Three similar shoe boxes were found in the defendant's apartment.)

The aforementioned agents immediately departed apartment 6H and proceeded to 575 West 57th Street with the defendant MURKIN. Special Agents Schindler and Kirtin maintained custody of the seized evidence.

DEFENDENT MURKIN:

MURKIN, John Carlos, is described as a white male, 5'8" tall, 135 pounds, brown eyes and black hair, BPOB: 12-15-38 in Venezuela. He claims to speak no English. Upon arrival at the New York District Office, MURKIN was read his Constitutional Rights per 28 USC form 18A by Special Agent Hector Kirtin on September 12, 1973 at the Southern District of New York. The defendant is assigned bail of \$100,000 cash surety which was set by United States Magistrate R. Kelly. Fingerprints and photographs were taken.

5. ORTIZ, Hector is described as a white male, approximately 35 years of age, 6'1" tall, 230 pounds, thick black wavy hair, peak washed skin and a mustache. He speaks no English. As of this date, ORTIZ has not been apprehended.

EXHIBITS AND SUMMARY OF EVIDENCE:

- Exhibit #2a, 502 grams of suspected cocaine, contained in double plastic bag.
- Exhibit #2b, 73 grams of suspected cocaine contained in a plastic bag.
- Exhibit #2c, 27 grams of suspected cocaine contained in a plastic bag.
- Exhibit A, white plastic "Regal" shoe bag.
- Exhibit B, "Regal" shoe box.

Exhibit C, small white paper bag.

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## BUREAU OF INVESTIGATION

DATE

(Continuation)

September 20, 1973

PAGE 3 - OF 3

TITLE

IDENTIFIER

FILE NUMBER

JOHN DOE &amp; CARLOS

PROGRAM USE

61-727277

The evidence was sealed by Special Agents Schenkenberg and Kane and maintained in Region 2. The evidence was conveyed to the Regional Office by Special Agents Schenkenberg, Irwin and Terrarone. Exhibits 2a, 2b, and 2c were field tested for cocaine with positive results. They were weighed and placed in a locked sealed envelope and placed in the night depository vault at Region 2.

On September 18, 1973 Special Agents Schenkenberg and Kane placed Exhibits A and C in the Exhibit B and sealed the evidence. On September 19, 1973 Special Agent Kane placed Exhibits A, B, and C in the non-narcotic evidence vault in Region 2. On September 19, 1973 Special Agent Kane and carried Exhibits 2a, 2b, and 2c to the Region 2 Laboratory, 90 Church Street, New York, New York.

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